

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
U.T., CHANDIGARH**

Appeal No.	:	161 of 2024
Date of Institution	:	18.04.2024
Date of Decision	:	15.07.2024

Sh. Simranjeet Singh Sidhu son of Sh. Iqbal Singh resident of House No.815, Sector 16-D, Chandigarh – 160015.

...Appellant/Complainant.

Versus

- 1] Manager, Raw House Fitness, Address SCO 98-99-100, 3rd and 4th Floor, Sector 17-D, Chandigarh.
- 2] Trainer Rahul, Raw House Fitness, Address SCO 98-99-100, 3rd and 4th Floor, Sector 17-D, Chandigarh.

...Respondents/Opposite Parties.

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

MR. PREETINDER SINGH, MEMBER

ARGUED BY :-

Sh. Simranjeet Singh Sidhu, appellant in person.

Sh. Raul Vohra, Advocate for respondent No.1.

Respondent No.2 exparte vide order dated 27.05.2024.

PER PREETINDER SINGH, MEMBER

The instant appeal has been filed by the complainant Sh. Simranjeet Singh Sidhu (appellant herein) for enhancement in compensation and litigation awarded by Ld. District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (in short 'District Commission), vide order dated 06.03.2024 while partly allowing his Consumer Complaint bearing No.143 of 2022, in the following manner:-

“4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs are directed as under :-

- i. to pay ₹4050/- to the complainant alongwith interest @ 9% per annum from the date of institution of the present consumer complaint till onwards.
- ii. to pay an composite amount of ₹7000/- to the complainant as compensation for deficiency in service;

5. This order be complied with by the OPs within 45 days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest @ 12% per annum from the date of this order, till realization.”

2] Before the District Commission, it was the case of the complainant that he joined the gym of the opposite parties (respondents herein) on 06.12.2021 by paying a membership fee of ₹4,500/- through UPI, with the payment screenshot, Annexure C-1. A Membership Contract was entered into between the parties on 11.12.2021, as documented in Annexure C-2. For the first two days, he worked out with very light weights to avoid injury. However, on the third day i.e. 10.12.2021, opposite party No.2 instructed him to use heavier weights for an extended period and pushed the complainant excessively in terms of both time and weight. During this session, the complainant informed opposite party No.2 multiple times that he was having difficulty in breathing and felt like he might faint but opposite party No.2 insisted continue, making him exercise for four different body parts. The complainant's body could not handle the excessive muscle strain. On 12.12.2021, he noticed his urine was brown instead of its usual color. He immediately called his wife, a doctor, who advised him to seek medical attention and drink plenty of water to prevent kidney damage, as it was suspected to be a case of Rhabdomyolysis. He followed this advice and after about 24 hours, his urine began to return to a whitish-brown color. Seeking a second opinion, he went to Nulife Hospital in Sector 115, Mohali, where an ultrasound and various tests confirmed that he was suffering from Rhabdomyolysis due to direct or indirect muscle injury. The injury was attributed to the rash and negligent actions of opposite party No.2, who forced him to over-exercise. At the time of joining, he was assured that the gym had trained professionals who would help him maintain good health. Instead, the trainer, opposite party No.2, compelled him to over-exercise leading to his condition. The complainant claimed claims that the terms and conditions of the contract are one-sided and amounted to unfair trade practice. This situation, he asserted, also constituted a deficiency in service and unfair trade practice by the opposite parties. Despite several requests for the opposite parties to admit the claim, there was no resolution of dispute, which led to the filing of a consumer complaint before the District Commission.

3] On the other hand, the opposite parties did not appear before the District Commission despite proper service and they were proceeded against ex-parte on 16.11.2022.

4] In appeal before us, upon notice, respondent No.1 – Raw House Fitness appeared through Sh. Raul Vohra, Advocate whereas none appeared on behalf of respondent No.2 – Trainer Rahul despite proper and due service and hence, respondent No.2 was proceeded against ex parte vide order dated 27.05.2024.

5] Enhancement in compensation and litigation expenses has been sought by the appellant on the ground that the District Commission wrongly held in the impugned order that the terms and conditions of the Membership Agreement, Annexure C-2 are not one sided as the appellant had acknowledged and agreed to the contents of the Membership Agreement, appending his signature accordingly. It has further been stated that the District Commission failed to appreciate the facts and factual position on record, which resulted in completely unreasonable judgment. It has further been stated that such terms in contract do not apply to law of torts and consumer protection and cannot be the basis to state that even through a party was negligent, that party is not liable to compensate for its tortuous acts to the victim. It has further been stated that the respondents never submitted any arguments before the District Commission denying the claim of the appellant of being diagnosed with Rhabdomyolysis as a cause of excessive workout in the gym rendering it as an uncontested fact in the present matter but the District Commission gave an adverse finding that it was unsafe to hold that the complainant suffered from Rhabdomyolysis due to negligence of the opposite parties and that too, when the appellant submitted the requisite medical reports showing Rhabdomyolysis because of strenuous exercise, before the District Commission. It has further been stated that the finding of the District Commission that Rhabdomyolysis is not only caused due to muscle injury but there are other reasons like drugs, toxins, infections, muscle ischemia, electrolyte and metabolic disorders, genetic disorders, exertion or prolonged bed rest, and temperature-induced states such as neuroleptic malignant syndrome (NMS) etc. is not backed by any form of evidence presented by the respondents and is prima facie arbitrary. Lastly, it has been prayed that the appeal be accepted and relief as claimed in the complaint be awarded in its totality.

6] Contesting the appeal, respondent No.1 – Raw House Fitness filed its written arguments, wherein it has been stated that the appellant himself is guilty of violating the terms and conditions of Membership Agreement as he himself adopted self-styled exercises and was not following the instructions of the trainer and further no one can force any person to continue exercise when there is difficulty for doing exercises because every person can take care of his own health. It has further been stated that as per the documents available on record, nowhere it is mentioned that the appellant suffered such kind of disease and he consulted a Doctor only one time on 13.12.2021 after 3 days of alleged injury whereby Dr. Harneet Singh also advised him for proper diet and exercise because he had symptoms of general weakness and brown urine color due to lack of fluids and urine color always changes due to dehydration and also advised him to take plenty of fluids. It has further been stated that the appellant had symptoms of brown urine color whereas on the same day i.e. 13.12.2021, his tests showed that color of urine was pale yellow and clear in appearance, which is quite normal in day to day human body function. It has further been stated that the appellant never faced such kind of disease in his life and filed frivolous, fabricated complaint with baseless and untenable allegations. It has further been stated that neither the appellant has attached any payment receipt of doctor nor any payment receipt of the tests has been placed on record. It has further been stated that the respondents - Gym is having a worldwide chain and not a small brand, they always use very clean and safe equipments and having well trained and certified trainers who give proper advice and services to the members. It has further been stated that a trainer of the Gym is well certified by K11 Academy of Fitness Sciences, which is certified by REPS India empowered by National Skill Development Corporation under the Ministry of Skill, Development and Entrepreneurship in Government of India. Lastly prayer for dismissal of appeal has been made by the respondents.

7] After hearing the rival contentions of the parties and going through the record and the impugned order, we are of the considered opinion that the instant appeal is liable to be partly accepted for the reasons to be recorded hereinafter.

8] The first limb of argument raised by the Counsel for the appellant is that the contents/terms and conditions of the Membership Agreement, Annexure C-2 are one-sided and to the detrimental to the rights of the consumer-appellant. We have gone through the contents of the Membership Agreement, Annexure C-2, which in our considered opinion, is totally one-sided and which absolves the respondents/opposite parties from all kind of responsibility and liability. Such term and condition as contained in the said Membership Agreement, Annexure C-2, is extracted, *inter alia*, as under:-

“.....I HERE RELEASE, INDEMNIFY & HOLD HARMLESS Anytime Fitness, LLC., House of Fitness Pvt. Ltd., Raw House Fitness AND THE OWNERS OF ALL CLUBS WITHIN THE ANYTIME FITNESS SYSTEM, as all sponsors & advertisers & all owners & lessors of the premises of such clubs, and their respective officers, affiliates, agents & employees WITH RESPECT TO ANY & ALL INJURY, DISABILITY, DEATH, LOSS OR DAMAGE to person or property that may arise out of or in connection with my use of any of the equipment or the facilities of the CLUB of any other Anytime Fitness club or any incident that occurs while using such facilities, or otherwise related to my membership.”

In our considered view, the above term and condition attempts to release the Gym and all associated entities from liability for virtually any kind of injury, disability, death, loss, or damage that might occur. This includes not only the use of equipment but also any incident occurring on the premises. Such a broad waiver can be seen as unfair to consumers, as it may absolve the Gym from responsibility even in cases of gross negligence or intentional misconduct. Consumers often have less negotiating power compared to businesses. They might feel pressured to accept these terms in order to gain access to the Gym, even if they are uncomfortable with the level of risk they are being asked to assume. By indemnifying the Gym against almost all forms of liability, the above term and conditions might reduce the incentive for the Gym to maintain a safe environment and properly maintain equipment, potentially increasing the risk of harm to consumers. Overall, above term and condition is designed to protect the business at the expense of the consumer, potentially compromising the consumer's right to a safe environment and fair treatment, which in our considered view is an unfair contract. Moreover, the Consumer Protection Act, 2019 aims to protect consumers from unfair trade practices and ensure their rights are upheld. An unfair contract, as defined in Section 2(46) of Consumer Protection Act, 2019, includes terms that are excessively one-sided in favour of the service provider and detrimental to the consumer. Thus, the above term and condition of the Membership Agreement, Annexure C-2, creates a significant imbalance by heavily favouring the respondents Gym and associated entities. It releases them from virtually all liability, including injury, disability, death, or loss, regardless of the cause, which is highly detrimental to the consumer. Therefore, the finding of the District Commission below that it is not an unfair contract is totally unsustainable in the eyes of law.

9] Now coming to the second limb of argument that the District Commission wrongly held that the appellant suffered from Rhabdomyolysis not due to any negligence of the opposite parties, which could be due to other reasons also, it may be stated here that bare perusal of OPD Card, Annexure C-3, transpires that on 13.12.2021, when the appellant approached Dr. Harneet Singh, MBBS, MD. (Internal Medicine) & D.M. (Gastro & Hepatology), at Nulife Hospital, Sector 115, Kharar Landra Road, the said Doctor noticed Symptoms of “Brown urine (1 Day), General weakness, recent straining (Strenuous exercise)” and she diagnosed the appellant to be the case of “HTN – Hypertension, Rhabdomyolysis”. Thus, it is very much established that the appellant approached the Doctor only after he felt uncomfortable and not well after doing exercise at respondents – Gym. The District Commission denied the claim of the appellant on this account on the basis of an observation that there could be other reasons also for Rhabdomyolysis but it cannot be ignored that Rhabdomyolysis is a rare muscle injury where the muscles break down and it is also a life-threatening condition in rare cases. It's symptoms include weak and sore muscles and color changes in the pee. Therefore, one thing is clear that the appellant suffered from Rhabdomyolysis because of excessive exercise or training at the respondents Gym, which the respondents failed to supervise. No doubt, the trainers of the respondents Gym may be experts in their field and certified ones but the fact is that respondent No.2 failed to exercise its expertise and supervise the appellant during first three days of his start. Despite the admitted position on record that the respondents did not appear before the District Commission below, respondent No.2 again chose not to appear before this Commission and was proceeded ex parte. In the absence of any written version or evidence to the contrary led by the respondents before the District Commission below, who chose not to appear before it, the averments made in the complaint have gone un rebutted and the view taken by the District Commission below to the contrary is not sustainable in the eyes of law and even on facts based on the documentary evidence led by the appellant before it (District Commission). It is noteworthy that the appellant approached the Doctor for the said disease and got all the necessary tests done as prescribed, for which, he spent money. No doubt, the appellant has not placed on record the receipts of the amounts spent for these tests but it cannot be ignored that it was only account of negligence and deficiency in rendering service on the part of the respondents in properly supervising the appellant as regards exercises that the appellant was brought to the position as stated by him in his complaint.

10] It was the specific case of the appellant that on the third day i.e. n 10.12.2021, he was instructed by respondent No.2 - trainer to use heavier weights for an extended period and was excessively pushed in terms of both time and weight. Despite the appellant repeatedly informing respondent No.2 about his difficulty in breathing and feeling faint, the said trainer insisted him to continue. We would like to add here that Gym trainers have a responsibility to take due caution while imparting training to ensure the safety and well-being of their client. They should also assess each client's fitness level, health conditions and personal goals before creating a training program to the individual's needs and capabilities, reducing the risk of injury. A trainer should clearly explain and demonstrate exercises, ensuring that clients understand the correct form and technique and misunderstandings or poor communication can lead to improper execution and potential injury. Continuous supervision is also crucial, especially when clients are performing new or complex exercises and in such a case, a Trainer should monitor clients closely to correct any mistakes and provide immediate feedback. However, in the instant case, the respondents failed to do so. Nothing has been brought on record to establish that respondent No.2 – trainer fully performed his duties, while imparting training to the appellant. Therefore, the finding of the District Commission absolving the respondents from any kind of responsibility and liability on the basis of Membership Agreement, Annexure C-2, is not well based.

11] In our considered view, the appellant has suffered immense mental agony and physical harassment on account of deficiency in rendering service on the part of the respondents. No doubt, the District Commission below has awarded composite amount of ₹7,000/- to the appellant as compensation for deficiency in service but this amount is too small to cater for the harassment and agony suffered by the appellant at the hands of the respondents. The Hon'ble Supreme Court in *Charan Singh, Appellant Vs. Healing Touch Hospital and others, Respondents, AIR 2000 Supreme Court 3138=III (2000) CPJ 1 (SC)* has held that Consumer Foras are competent enough to grant compensation, 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 providers. Indeed, calculation of damages, depends on the facts and circumstances of each case, taking into account, all the relevant factors, on the basis of accepted legal principles, on moderation. Similar principle of law was laid down in *Surendra Kumar Tyagi Vs. Jagat Nursing Home and Hospital and Another, IV (2010) CPJ 199 (N.C.)*, by the Hon'ble National Commission to the effect, that compensation should be commensurate with loss and injury, suffered by the consumer/Complainant. To our mind, if we enhance the compensation awarded by the District Commission below from ₹7,000/- to ₹25,000/-, that will meet the ends of justice. The District Commission below has also erred in not awarding any cost of litigation. It should have awarded cost of litigation to the appellant in view of principle of law laid down by the Hon'ble Supreme Court of India in a case titled as *Vinod Seth vs. Devinder Bajaj (2010) 8 SCC 1*, wherein it was held that the litigation cost awarded by the Courts or Foras, should not be a punishment to the defeated party, but as a recompense to the successful party, for the expenses to which he/she had been subjected, or for whatever appeared to the Courts/Foras, to be the legal expenses incurred by the party, for prosecuting his/her suit or defence. Thus, the appellant is also entitled to costs of litigation, which the District Commission below did not award. To the extent indicated above, the impugned order needs to be modified.

12] For the reasons recorded above, the appeal is partly accepted. The impugned order passed by the District Commission below is modified as under:-

The respondents/opposite parties are directed:-

- i. to refund the amount of ₹4,050/- to the appellant/complainant alongwith interest @9% per annum from the date of institution of the consumer complaint i.e. 31.01.2022 onwards, within a period of 45 days from the date of receipt of certified copy of this order, failing which, thereafter, the said amount shall entail interest @12% p.a. from the date of default i.e. after expiry of 45 days' period till actual realization.
- ii. to pay a consolidated amount of ₹25,000/- (instead of ₹7,000/-) as compensation for mental agony and physical harassment within a period of 45 days from the date of receipt of certified copy of this order, failing which, the said amount of ₹25,000/- shall carry interest @9% p.a. from the date of default i.e. after expiry of 45 days' period till actual realization.
- iii. to pay an amount of ₹7,000/- as litigation expenses within a period of 45 days from the date of receipt of certified copy of this order, failing which, the said amount of ₹7,000/- shall carry interest @9% p.a. from the date of default i.e. after expiry of 45 days' period till actual realization.

13] Pending miscellaneous application(s), if any, stand disposed of accordingly.

14] Certified copy of this order be sent to the parties free of charge.

15] Files be consigned to the Record Room after completion.

Pronounced.

15.07.2024.

(JUSTICE RAJ SHEKHAR ATTRI)

PRESIDENT

(PREETINDER SINGH)

MEMBER

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