

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 13.08.2024

Date of Hearing: 04.10.2024

Date of Decision: 28.11.2024

FIRST APPEAL NO-532/2024

IN THE MATTER OF

LIFECCELL INTERNATIONAL PRIVATE LIMITED

NO. 16, VIJAYRAGHAVA ROAD,
1ST LANE, T. NAGAR,
CHENNAI, TAMIL NADU-600017

...APPELLANT

(Through: Mr. Sumit Roy and
Mr. Sidharth Mahajan, Advocates,
Mob.9899142755 &
Email: sumit.roy@claritaslegal.in)

VERSUS

MS. SHARANYA SINHA,
W/O MR. SHASHANK SINGH,
R/O FLAT NO.105,
YAMUNA-1, D-6, VASANT KUNJ,
NEW DELHI-110070

ALSO AT:
DAYA KUTIR,
PLOT NO.107-109, KHASRA NO.150,
RAJPUR KHURD EXTENSION COLONY,
CHHATARPUR, NEW DELHI-110068

....RESPONDENT

(Through: Mr. R.V. Sinha, Advocate
Mob. 9868230464 &
Email: sinhaadvocate@hotmail.com)

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Sidharth Mahajan (Mob. No.9958954408),
counsel for the appellant.

Mr. R.V. Sinha, Mr. A.S. Singh, Mr. Amit Sinha and Ms. Shriya Sharma (Mob. No. 9868230464), counsel for the respondent.

PER : HON'BLE PINKI, MEMBER (JUDICIAL)

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

"Complainant has filed the present complainant seeking damages of Rs.10,00,00,000/- for being deprived of once in a life time opportunity, mental agony, litigation cost and harassment caused. Complainant also prays for compounded interest @ 18% per annum on the amount claimed.

- 1. Complainant took services of the OP who represented itself it to be the first and largest Stem Cell Bank Network in India by paying an amount of Rs.20,990/-. The invoice dated 19.01.2021 is annexed as Annexure C-1. Further an amount paid Rs.10,000/- was to be paid to the hospital to enable the OP to be able to carry out its work of collection at the time of delivery of the child of the complainant.*
- 2. It is further stated as per terms of the contract dated 17.01.2021 which is annexed as annexure C-2, the complainant was to inform the OP about the date and time of delivery of her child and the OP was to arrange to have the umbilical cord blood and tissue of her child collected for further processing preservation.*
- 3. It is stated that after multiple follow up at the end of the complainant, OP collected the cord blood of complainant's child from the delivery room on 23.01.2021 but did not sent any tracking ID/link for the collected sample as per the practice. The complainant being busy in the celebration of birth of her child felt secure at the thought that the stem cells and tissue have been collected and preserved by OP.*
- 4. It is further stated that to the shock of the complainant and her family, OP contacted her on 28.01.2021 that the cord blood of the complainant's child was*

misplaced in transit on 24.01.2021. It is stated that no explanation was offered for the gross negligence nor any remedial measures were suggested by the OP leaving the complainant disturbed at having missed once in a life time opportunity for no fault of hers.

- 5. An insensitive and casually worded email dated 29.01.2021 was sent by the OP which is annexed as annexure C-3. As a sop, OP offered to the complainant "Stem Cell HLA Matching" i.e. a chance to become a part of its community banking programme so as to take stem cells (if the situation arises) from some stranger whose stem cells and tissues may or may not be satisfactorily suitable/ viable / compatible with that of the complainant or her family.*
- 6. It is stated by the complainant that "Stem Cell, HLA Matching" is unlikely to be helpful in treatment of 80% potential diseases that the OP claimed the baby's cord blood would help and was confirmed to the husband of the complainant by the Vice President of the OP.*
- 7. It is further stated by the complainant that as per contract dated 17.01.2021 under Clause 3 "client responsibilities" the complainant has performed her part of the duties and once the sample was collected, it was out of the control of the complainant who had no role to play thereafter in its transportation or storage. It is stated that gross negligence on the part of the OP in misplacing the sample is an example of res ipsa loquitur. It is stated that the act and illegal omission of the OP has wrongfully caused mental pain, stress to the complainant and by offering access to a community pool of which her sample is not a part, is a way of saying that the sample was never collected.*
- 8. It is stated that the act and omission of the OP amounts to unscrupulous exploitation of consumers, deficiency in service, unfair trade practice and for this act/ omission OP is liable to compensate the complainant for missing once in a life time opportunity to potentially save lives of complainant and her family.*
- 9. It is stated that use of stem cells is in the treatment of several disease such as thalassemia, leukaemia,*

lymphoma and auto immune disorders, GVHD (Graft Vs. Host Diseases) across in majority of bone marrow giving free the outside of the family of the patient however, the cord blood which is a left over blood in the umbilical cord and placenta after the birth of a child is seen as comparable to bone marrow in treatment of its utility in stem cell plantation and in fact offers a number of advantages over the bone marrow. Therefore, parents are now keen to store stem cell of their children at the time of birth so that those may be used in inspected illness of the child requiring stem cell transplant in future. Umbilical cord blood is therefore being recognized as a rich source of blood forming stem cells which, if required can be used not only to treat dreaded diseases but also in regenerative medicines. Even, the gelatine tissues in the cord is considered to be a rich source of mesenchymal stem cells have also been shown to repair damaged heart and nervous tissues, besides treating type-1 diabetes and children borne with neurological defects.”

2. The District Commission after taking into consideration the material available on record passed the judgment dated 06.06.2024, whereby it held as follows:

“29.....It is seen that the complainant has paid a sum of Rs.20,990/-.

Clause 8 LifeCell Client Benefit Programmes:

8.9 Sample Collection and Transport Assistance

LifeCell would arrange for a certified and trained paramedic for the collection of the material blood and umbilical cord blood and/ or a certified service provider for transport of the material blood and umbilical cord blood to LifeCell Laboratories.....

Therefore, it is duly established that the OP had to collect cord blood of the complainant's child who was born on 23.01.2021 but it was lost in transit on 24.01.2021.

30. Further, OP in its brochure has promoted the pooling of stem cells and have stated that these have a potential to treat several medical conditions and other benefits. And though presently, it cannot be stated conclusively that

stem cell may treat a host of illnesses in future yet it is a science which is in its nascent stage and is developing. It is undisputable that the OP has professed that the cord blood and the umbilical cord would be beneficial in future for the illnesses of the entire family and is not restricted to the new born child.

Having professed that OP cannot now state that cord blood may not be as good as bone marrow transplants. Having gone through the facts and circumstances, there is no iota of doubt that the OP has been negligent in its services as it was bound by the agreed terms of the contract to collect the cord blood and the umbilical cord of the complainant at the time of birth of her child. The OP has miserably failed to do its duty in ensuring that the sample reaches their laboratory safely. On account of the act of the OP, the complainant has missed an opportunity which comes only once in a lifetime.

Coming to the question of compensation, clause 8.8 of the contract states as under:

Disaster relief Should for any unforeseen reason, that is beyond the control of life cell, which may potentially deteriorate or cause loss, harm and damage, entirely or partly, of the umbilical cord blood and/ or specimen/s, during transit, processing and/or storage and upon specimen/s and/or expanded MSC's being required for stem cells transplant is unfit and/or insufficient, then life cell shall pay Rs.20,00,000/- (INR two million only) to the client if it is unable to source expanded MSCs or matching umbilical cord blood specimen/s from any public stem cell bank worldwide and/or from the life cell registry (applicable only to Life Cell community banking clients) within 14 days for a value not exceeding Rs.20,00,000 (INR two million only).

In this case OP would not be able to source expanded MSCs or matching umbilical cord blood specimen having lost the umbilical cord etc. of the complainant and therefore, having no source to match.

The Hon'ble Supreme Court in CA No.2892-2894 of 2023, Anita Merchant vs Suneja Towers has held

In regard to such awarding of compensation and/or punitive damages, the forum concerned could take all the relevant factors into account and award such amount as deemed fit and necessary but ordinarily, in the matters of money refund, awarding of compound interest as a measure of punitive damages is not envisaged. **As to what would be the quantum of compensation and for that matter, what would be the quantum of punitive damages, would depend on facts and circumstances of each case but while awarding so, the forum would be advised to specify all the relevant factors and basis of its quantification.** A shortcut of awarding compound interest is neither envisaged by the statute nor do we find any such term of contract between the parties or any such usage. As noticed, the attempt to seek compound interest in such real estate dealings did not meet with approval of this Court and in the case of Ireo Grace Realtech (supra) such a claim was declined by a 3-Judges Bench of this Court for having no nexus with the commercial realities of the prevailing market. Going by the principles governing the nature of jurisdiction of the Consumer For a as also the principles enunciated by this Court including those in the 3-Judge Bench decision, we need to disapprove the proposition of awarding compound interest in the cases of monetary refund in such dealings.

Hon'ble National Consumer Disputes Redressal Commission in the matter of Rajesh Jhorawat vs. LifeCell International Pvt limited CC No. 95/2018 dated 13.03.2020 after considering clause 8.2 of the contract held that

“Thus even the opposite party recognizes that the matching stem cells even if available with the stem cell bank will cost at least Rs.20.00 lacs. Since the sample was not collected in time and the stem cell could not be preserved, the opposite party, in my opinion, should pay a compensation amounting to Rs.20 lacs to the complainant.”

This Commission gone through the ITRs of the complainant and her family members placed on record as also the law laid down by the Hon'ble Supreme Court in Anita

Merchant vs. Suneja Towers and ITC Ltd. vs. Aashna Roy and the Hon'ble National Consumer Disputes Redressal Commission passed in Rajesh Jhorawat vs. Life Cell international Pvt. Ltd.

This Commission is of the view on account of the act of the OP, the complainant has missed an opportunity which comes only once in a lifetime. A loss of this kind is irreparable. The cost of treatment is irrespective on the income of the person claiming treatment. The ITRs of the complainant and her family members cannot decide the cost of treatment of illness. This kind of loss cannot be compensated however, placing reliance on the judgments mentioned above as also the clauses 8.2 and 8.8 of the contract, this Commission directs the OP to pay a compensation of Rs.20,00,000/- to the complainant within three months from the date of the pronouncement of the order failing which the compensation of Rs.20,00,000/- would be paid with interest @ 5% p.a.”

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Opposite Party has preferred the present appeal on the following reasons:

- (a) Because the Ld. District Commission failed to appreciate that the Respondent has not made out any case under the provision of the Consumer Protection Act, 1986.*
- (b) Because while passing the Impugned Judgment, the Ld. District Commission failed to appreciate the arguments raised by the Appellant and allowed the Complaint filed by the Respondent erroneously granting an amount of INR 20,00,000/- compensation.*
- (c) Because the Ld. District Commission while allowing the Complaint has committed a manifest error by relying on the Judgment dated 13.03.2020 passed by the Hon'ble NCDRC in the case titled “Rajesh Jhorawt vs. LifeCell International Pvt. Ltd.” in Consumer Case No.95 of 2018 to grant compensation of INR 20,00,000/-. It is submitted that the Ld. District Commission has neglected the Order dated 25.09.2020 passed by the Hon'ble Supreme Court in the Case titled “Lifecell Internatinal Pvt. Ltd. & Anr. Vs. Rajesh Jhorawat” registered as Civil Appeal No.3175/2020*

whereby the Hon'ble Supreme Court was pleased to stay the operation of the Impugned Judgment. It is respectfully submitted that the Ld. District Commission despite being aware of the stay of the Judgment dated 13.03.2020 relied upon the Judgment dated 13.03.2020 and awarded compensation of INR 20,00,000/- to the Respondent.

- (d) Because the Ld. District Commission erred in holding that the Appellant is negligent in providing the services to the Respondent. It is the case of the Appellant that there is no deficiency of service and the services availed by the Respondent from the Appellant could not be provided due to the misplacement of a baby cord sample of the Respondent's baby by a third party transporter. The Appellant submits that the Appellant and the scope of Services to be provided by the Appellant only included processing, testing, and storing umbilical cord blood stem cells and testing maternal blood for infectious disease after the sample reaches its lab.
- (e) Because the Ld. District Forum overlooked that the baby cord sample collected by a third-party transporter was misplaced during transit, importantly, the baby cord sample did not reach the Appellant's lab for processing, testing and storing. Consequently, the Appellant could not provide its services to the Respondent. Pursuant thereto, Appellant duly refunded the amount paid by the Respondent to the Appellant in March 2021.
- (f) Because the Ld. District Commission overlooked the contractual clauses that disclaim Appellant's responsibility for third-party services, including transportation. Specifically, Clause 10.1 clearly indicates that the responsibility for the cord blood's loss lies with the third-party transporter, not Appellant. Considering the nature of the Agreement between the parties the Ld. District Commission ought to have considered that the Respondent had agreed to these terms and thus, Appellant should not be held liable for the actions of the transporter. Interestingly, the transportation agency was not impleaded as a party Respondent before the Ld. District Commission.
- (g) Because the Ld. District Commission failed to appreciate that the Respondent had released the Appellant in case of default by any third-party services providers like caregiver,

transporter etc. Further, as per Clause 10.2, Respondent agreed that the liability for any loss, harm, damage, or claim of any kind in connection with the Agreement or Services provided by the Appellant and/or any third party shall be limited to return of an amount of equal to all fees paid by the Respondent to the Appellant. Admittedly, the said amount stands paid by the Appellant to Respondent.

- (h) Because the Agreement explicitly allowed the Respondent to choose its own mode of transportation, thereby transferring the transportation risk to the Respondent. The Ld. District Commission's failure to take this into account when holding Appellant negligent for the loss in transit represents a significant oversight. The Ld. District Commission further failed to consider that the Agreement expressly authorized the Respondent to determine their preferred mode of transportation, thereby transferring the risk of transportation to the Respondent. It is evident from the record that the Appellant provided options to the Respondent, who knowingly assumed the attendant risks.
- (i) Because the Ld. District Commission failed to recognize reasonable measures taken by the Appellant to provide its services to the Respondent after the loss of the baby cord sample only as a good-will gesture. Further, it may be noted that the Appellant engaged a third-party transporter at the behest of the Respondent, which is a reasonable measure for the transportation of the baby cord sample. Since the Appellant was not able to provide its services to the Respondent due to the loss of the baby cord sample, the Appellant refunded the money paid by the Respondent without any protest and offered an alternative solution through Community Banking, which the Respondent declined. This clearly demonstrates that the Appellant acted in good faith and took reasonable steps to mitigate the situation and cannot be held to be negligent in its services.
- (j) Because the Ld. District Commission failed to appreciate that there is no breach of duty by the Appellant and the Appellant has acted in a reasonable manner. There is no error or any negligence on part of the Appellant in providing the services enumerated under the Agreement. The finding

recorded by the Ld. District Commission is neither justified nor founded from the ingredients of the Complaint.

- (k) Because the Ld. District Commission's conclusions regarding the Appellant's inability to source matching umbilical cord specimens and the determined compensation amount lack a proper basis in evidence, averments, pleadings, or arguments. These conclusions, drawn without sufficient support, undermine the credibility of the judgment. It is pertinent to highlight that neither the Respondent nor the Appellant presented this issue before the Learned District Commission, nor was the Respondent questioned on this matter during the course of the arguments. Hence, the Learned District Commission's conclusion, based on presumption and assumption, is not maintainable in law.
- (l) Because the Ld. District Commission erred in allowing the Consumer Complaint against the Appellant without going into the merits of the case and thereby granting the said compensation by way of the Impugned Judgment.
- (m) Because the Ld. District Commission erred in not considering that in the Judgment passed by the Hon'ble Supreme Court in the case titled "Venkataraman Krishnamurthy Vs. Lodha Crown Buildmart CA No.971/23 wherein it was held "once the parties committed themselves to a written contract, whereby they reduced the terms and conditions agreed upon by them in writing, the same would be binding upon them". In the event such a written contract provided for the consequences that are to follow in the event of breach of the conditions by one or the other of the parties thereto, such consequences must necessarily follow and if resisted, they would be legally enforceable.
- (n) Because the Hon'ble Supreme Court in ITC Ltd. Vs. Aashna Roy CA No.6391/21 had considered the question of adequate compensation and it was stated that "we do not find reference to or discussion on any material evidence to Quantify the compensation... In the absence of any material with regard to her existing job the emoluments received by her any past, present or future assignment, in modeling... National Consumer Disputes Redressal Commission fell in error by awarding compensation to the tune of Rs.2 Crores without there being any material to substantiate and

support the same or which could have helped the NCDRC to quantify the compensation”. It is the case of the Appellant that in the present case the Ld. District Commission fell in error by relying on the Judgment dated 13.03.2020 passed by the Hon’ble National Consumer Disputes Redressal Commission in the case titled “Rajesh Jhorawat vs. Lifecell International Pvt. Ltd.” in Consumer Case No.95 of 2018 to grant compensation of INR 20,00,000/-, despite the knowledge of the fact that the said Judgment was stayed by the Hon’ble Supreme Court in the case titled as “Lifecell International Pvt. Ltd. & Anr. Vs. Rajesh Jhorawat” registered as Civil Appeal No.3175/2020.

- (o) Because the Ld. District Commission failed to appreciate that the Respondent has not been able to establish that there has been negligence on the part of the Appellant, as the specimen did not reach the Appellant’s lab to provide services to the Respondent.
- (p) Because the Ld. District Commission failed to appreciate that there is no justification for the claim of compensation as claimed by the Respondent in the Complaint.
- (q) That the Ld. District Commission ought to have considered that all care and caution was taken by the Appellant and there was no negligence involved in the matter by the Appellant.
- (r) Because the Ld. District Commission ought to have considered that the entire complaint is vexatious, frivolous and petty against a renowned company with the ulterior motive of enriching unjustly by victimizing and harassing the Appellant without either specifically pleading in the complaint or filing any proof or document to substantiate his claim.
- (s) Because the Ld. District Commission had not exercised judicious discretion vested in it in accordance with law while passing the Impugned Judgment.
- (t) Because the Ld. District Commission has failed to appreciate that the evidence on record and has drawn wrong inference from the facts proved on record which were vitiated findings.”

4. The respondent, on the other hand, denied all the allegations/grounds of the appeal and submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the said order.
5. Respondent has filed their written submissions. However, the Appellant has failed to file their written submissions on record.
6. We have carefully perused the material on record.
7. The main question for consideration before us is whether the District Commission erred in allowing the complaint filed by the Respondent/ Complainant before it.
8. It is admitted that on 19.01.2021 the respondent had availed service of the appellant for processing, testing, storing of Umbilical Cord Blood Stem Cells by paying an amount of Rs.20,990/- vide agreement dated 17.01.2021 and further an amount of Rs.10,000/- was to be paid to the hospital to enable the appellant/opposite party to be able to carry out its work of collection at the time of delivery of respondent's/complainant child. Further, on 23.01.2021, appellant collected the Cord blood of respondent's child from the delivery room of the hospital; on 28.01.2021, respondent was informed by the appellant that the cord blood of respondent's child was misplaced in transit on 24.1.2021; vide email dated 29.01.2021, the appellant offered to the respondent "Stemcell HLA Matching i.e. a chance to become a part of its community banking programme so as to take stem cells (if the situation arises) from some stranger whose stem cells and tissues may or may not be satisfactorily suitable/ viable/ compatible with that of the respondent or her family as sort of the next best thing available; on 04.03.2021, the respondent issued a demand notice demanding a compensation of Rs.10,00,00,000/- upon which appellant replied on 10.03.2021; appellant vide letter dated 18.03.2021 sent a cheque of Rs.20,990/- as a refund of

consideration paid for availing service of the appellant which was encashed by the respondent on 09.04.2021; the complaint was filed before the District Commission praying for mental agony, legal fee and harassment caused by praying for compensation, which was allowed by awarding Rs.20,00,000/- as compensation.

9. It is submitted by the appellant that the appellant and the respondent had entered into the Agreement and as per the clauses that the scope of Services to be provided by the Appellant only included processing, testing, and storing umbilical cord blood stem cells and testing maternal blood for infectious diseases after the sample reaches its lab and the appellant was not responsible for third-party services, including transportation. Further, it is submitted that the appellant could not provide its service to the respondent as the baby cord sample collected by a third party transporter was misplaced during transit, and the baby cord sample did not reach the Appellant's lab for processing, testing and storing, pursuant thereto, appellant duly refunded the amount paid by the respondent to the appellant in March 2021.
10. *Per Contra*, the respondent reiterates that at no point of time the appellant sought permission regarding engagement of the transporter from the respondent to collect and deliver the item to the appellant nor such plea was even taken in the pleadings or in reply to the legal notice served upon the appellant on behalf of the respondent. Besides the transporter was not only selected by the appellant itself without any consent or knowledge but also the payment, if any, was made by them and that at no point of time, the respondent was informed of particulars of the transporter or any action taken against him for his failure to deliver the collected material in time and at the delivery address. Accepting the omissions and negligence of the appellant for itself and transporter, it on its volition offered alternate mode which was

refused by the respondent herein, being in violation of the contract and not acceptable to the respondent.

11. Further, it is submitted that the respondent has performed its liability under the agreement and delivered the umbilical Cord Blood and Tissue of the Baby as per the laid down procedure to the appellant through its representative and any denial of liability is arbitrary and after thought on the part of the appellant. The appellant has acted with gross negligence and failed to discharge its liabilities for preservation of the umbilical cord blood and tissue of the baby and transportation thereof in just and fair manner. It appears that the appellant has malafide intention to cause loss to the respondent by not preserving the collected material noted above interms of the agreement. It did not take prudent action for transportation or preservation. There is no material placed on record or earlier conveyed to the respondent even till the reply to the notice of demand notice as to the particulars of the transporter, action against them, whether any insurance was done or action taken against the transporter, if at all, it was loss caused on account of transportation. There is no evidence to shift the liability upon the respondent regarding her liability to get the sample transported to the appellant's required destination. The appellant is liable for the deficiency and negligence on the principle of *resipsal oquitur*.
12. We find that the appellant is in the business of stem-cell banking network i.e., collection and preservation of umbilical cord blood and tissue of a baby. The use of stem cells in the treatment of several diseases such as Thalassemia, Leukaemia, Lymphoma and auto-immune disorders and as per agreement, appellant collected the umbilical cord blood and tissue of respondent's child from the delivery room on 23.01.2021 for further processing preservation but on 28.01.2021, appellant informed the

respondent that cord blood of the child was misplaced in transit on 24.01.2021. The respondent has lost a lifetime opportunity to preserve the stem cells of her child which comes only once in a lifetime which is irreparable. If the sample was collected from the hospital by the appellant, it was a duty of the appellant to follow up the same till the delivery of the sample to their laboratory as the respondent was under impression that the sample was in the right hands and cannot run away from responsibility. It is also true that the appellant has failed to provide any proof on record that the transportation service was provided on the request of the respondent.

13. It is rightly dealt with question of transportation by the District Commission that it is duly established from Clause 8.9 Sample Collection and Transport Assistance that the OP had to collect cord blood of the respondent's/complainant's child who was born on 23.01.2021 but it was lost in transit on 24.01.2021.
14. The next question which was raised by the appellant that the District Commission has committed error by relying on the judgment dated 13.03.2020 passed by the Hon'ble National Consumer Disputes Redressal Commission in the case titled "Rajesh Jhorawat vs. LifeCell International Pvt. Ltd." in CC No.95 of 2018 to grant compensation of Rs.20,00,000/- as the operation of the said judgment was stayed by the Hon'ble Supreme Court on 25.09.2020 vide Civil Appeal No.3175/2020.
15. Though, the operation of the above said judgment was stayed by the Hon'ble Supreme Court, the compensation awarded by the District Commission on the observation of the judgment of the Hon'ble Supreme Court and considering clause 8.2 and 8.3 of the agreement.
16. Clause 8.2 and 8.8 of the Agreement read as under:

“8.2If after the Enrollment Date and before the completion of the Child’s twenty first birth anniversary, the Child and/or Child’s biological siblings/s and/or Child’s biological parent/s are diagnosed of medical conditions/s treatable using the Child’s own Specimen and/or matching unrelated umbilical Cord Blood Specimen/s from the LifeCell Registry (applicable only to LifeCell Community Banking Clients) through an approved hematopoietic Stem cell transplantation, then Life Cell shall pay the Client as per actual expenses or Rs,2,000,000 (INR Two Million only) whichever is lesser in order to offset the costs of such transplantation. In the unfortunate scenario that the Child’s own Specimen and /or Umbilical Cord Blood Specimen/s listed, on the LifeCell Community Banking Registry listed on the LifeCell Community Banking Clients) is either no longer available and/or not a suitable match to the patient for stem cell transplant (in the opinion of the patients transplant physician), then LifeCell will source alternative matching Umbilical Cord Blood Specimen/s from any public stem cell bank worldwide within 14 days for value not exceeding Rs.2,000,000 (INR Two Million only) in case if the matching Umbilical Cord Blood Specimen/s is not found in any public stem cell banks worldwide, then in order to support transplantation from any other approved stem cell sources (like bone marrow or peripheral blood), Life Cell shall pay as per actual expenses or Rs.2,000,000 (INR Two Million only) whichever is lesser to the Client in order to offset the costs of such stem cell transplantation.”

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8.8 Disaster relief should for any unforeseen reason, that is beyond the control of LifeCell, which may potentially deteriorate or cause loss, harm and damage, entirely or partly, of the Umbilical Cord Blood and/or Specimen/s, during transit, processing and/or storage and upon Specimen/s and/or expanded MSC’s being required for stem cells transplant is unfit and/or insufficient, then life cell shall pay Rs.20,00,000/- (INR two million only) to the client if it is unable to source expanded MSCs or matching Umbilical cord blood specimen/s from any public stem cell bank worldwide and/or from the life cell registry(applicable only to LifeCell community banking clients) within 14 days for a value not exceeding Rs.20,00,000 (INR two million only).”

17. As per Clause 8.2 & 8.8 of the agreement, if the child, his biological parents or siblings are diagnosed for any condition

treatable by stem cell transplantation using the stored specimen and in the opinion of the transplant physician, the specimen of retrieval does not meet the prevailing viability criteria, the opposite party would provide suitable matching stem cells and if the same is found at any public stem cell bank, failing which it will pay Rs.20.00 lakhs to the client. Thus, even the opposite party recognises that the matching stem cells, even if available with a stem cell bank, will cost atleast Rs.20.00 lakhs.

18. It is rightly observed by the District Commission that the appellant would not be able to source expanded MSCs or matching umbilical cord blood specimen as the umbilical cord etc. of the complainant was lost and therefore, having no source to match.
19. The District Commission has referred to the case of the Hon'ble Supreme Court in C.A. No.2892-2894 of 2023 titled Anita Merchant vs. Suneja Towers wherein it has been held that

*"In regard to such awarding of compensation and/or punitive damages, the forum concerned could take all the relevant factors into account and award such amount as deemed fit and necessary but ordinarily, in the matters of money refund, awarding of compound interest as a measure of punitive damages is not envisaged. **As to what would be the quantum of compensation and for that matter, what would be the quantum of punitive damages, would depend on facts and circumstances of each case but while awarding so, the forum would be advised to specify all the relevant factors and basis of its quantification.** A shortcut of awarding compound interest is neither envisaged by the statute nor do we find any such term of contract between the parties or any such usage. As noticed, the attempt to seek compound interest in such real estate dealings did not meet with approval of this Court and in the case of Ireo Grace Realtech (supra) such a claim was declined by a 3-Judge Bench of this Court for having no nexus with the commercial realities of the prevailing market. Going by the principles governing the nature of jurisdiction of the Consumer Fora as also the principles enunciated by this*

Court including those in the 3-Judge Bench decision, we need to disapprove the proposition of awarding compound interest in the cases of monetary refund in such dealings.”

20. Therefore, in view of the aforesaid discussion, we find no merit in the present Appeal filed by the Appellant and uphold the order dated 06.06.2024, passed by the District Consumer Redressal Commission-II (South-I), Udyog Sadan, C-22 & 23, Qutub Institutional Area, (Behind Qutub Hotel), New Delhi-110016.
21. Consequently, the present Appeal stands dismissed with no order as to costs.
22. Application(s) pending, if any, stands disposed of in terms of the aforesaid judgment.
23. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
24. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced on 28.11.2024