

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKAD

Dated this the 22nd day of June, 2026

Present : Sri. Vinay Menon V., President
: Smt. Vidya A., Member
: Sri. Krishnankutty N.K., Member

Date of Filing: 24/08/2024

DC/563/CC/360/2024

Ummer M.K.
S/o. Kammu,
Muthangayil House,
Pallam Post, Deshamangalam,
Thrissur – 679 532 - Complainant
(By Adv. M/s. C. Madhavankutty & P.V. Beena)

Vs

1. Fantasy Park,
Neotech Amusements & Resorts Pvt. Ltd.,
8/585, Malampuzha, Palakkad – 678 651.
Rep.by its Managing Director
2. The United India Insurance Company,
Divisional Office, Manual Sons Building,
2nd Floor, GH Road, Kozhikkode – 673 001
Rep.by its Divisional Officer - Opposite parties
(OP1 ex parte;
OP2 by Adv. S. Deepthi)

ORDER

By Sri. Vinay Menon V., President

1. Complainant is the father of one Fathima Afsana M.U. She is aged 10 and is studying in AUP School, Pallikkad. While on a one-day tour to the Theme Park run by OP1, she met with an accident in a ride called Water Play Station and sustained grievous injury. She was immediately taken to Malabar Hospital, Palakkad and thereafter to Valluvanad Hospital, Ottapalam. She underwent surgery for fracture of neck of femur (L). She was hospitalized from 2/2/2024 to 6/2/2024. Complainant had to expend over Rs.1 lakh. The child will also require future implant removal operation which will also incur heavy cost. This complaint is filed seeking an amount of Rs.7,50,000/- future treatment expenses and other incidental reliefs from OP1 Theme Park and their insurer OP2 Insurance Company.
2. OP1 did not enter appearance or file version even after receipt of notice. They were set ex-parte.

3. OP2 entered appearance and filed version denying liability. OP2 has insured OP1. OP2 is not aware of the facts that has led to this complaint. No claim is filed before them by OP1. The accident had not happened during the course of ride and hence the complainant is not entitled to get any compensation. It is unbelievable that the complainant's daughter has suffered an injury as is pleaded. There are no documents to substantiate the disability suffered by the child. No claim was filed before this OP. There is no cause of action as against OP2. Complaint is only to be dismissed.
4. The following issues were framed:
 1. Whether the complainant had proved that the accident occurred in the premises of the 1st OP during the course of ride installed by them?
 2. Whether the 1st OP had submitted a claim before the 2nd O.P.?
 3. If yes, whether the 2nd OP is liable to indemnify the 1st OP against the complainants claim?
 4. Whether there is deficiency in service/unfair trade practice on the part of O.P.s?
 5. Whether the complainant is entitled to any of the reliefs claimed?
 6. Any other reliefs
5. (i) Complainant filed proof affidavit and marked Exts. A1 to A13.

Marking of Exts.A1 & A2 are objected to on the ground they are issued to strangers to these proceedings. Exts.A3 and A4 can only be marked through the hospital who issued them. Ext.A6 is only a photocopy. Since this commission is not bound by the strait jackets of Evidence Act and since the O.P. has no case that these documents are either forged or fabricated and does not pertain to the facts and circumstances of the case, objects regarding these documents are overruled.

Ext.A9 is a communication between the OPs. Merely because a document is a communication between the O.P.s, it does not lose its evidentiary value. Hence this objection is overruled.

Ext.A12 is objected to as OP2 disputes the authenticity / correctness of the documents. Ext. A12 is a disability certificate issued by one Dr. Y.N. Koya. Author of this disability certificate was examined as PW1. Accordingly, issuance of Ext. A12 stands proved.

Item 6 bill bearing No.76304 dated 5/2/2024 forming part of Ext.A13 series is objected as it is issued to a stranger. Validity of the objection raised as regards this bill can be considered if at all this bill is considered to arrive at a conclusion.

(ii) OP filed proof affidavit and marked Ext.B1.

(iii) Doctor who treated complainant's child was examined as PW1.

6. Prior to discussing the culpability and liability of OPs to this dispute, a precursor has to be discussed.

As already stated, fall of the complainant's child occurred while at OP1 park. OP2 is the Insurance Company who has insured the OP1 in the event of any such unfortunate events like the one that has led to this dispute. Ext.B1 is the policy issued by OP2 to OP1 covering the relevant period. A perusal of Ext.B1 policy would show that there is a contract to indemnify OP1. There is privity of contract between OP1 and OP2.

7. The Hon'ble Supreme Court has held in **Citycorp Finance (India) Ltd. Vs. Snehasis Nanda (2025 KHC 6250)** that without privity of contract there cannot be a consumer – service provider relationship so as to bring a dispute under the purview of Consumer Protection Act. This decision was passed relying on the decisions in **Indian Oil Company Vs. Consumer Protection Council, Kerala {(1994)1SCC 397}** and **Janpriya Buildestate Pvt. Ltd. Vs. Amit Soni (2021 SCC Online SC 1269)** wherein privity of contract between consumer and service provider as a foundational ingredient and sine qua non to bring a dispute under the ambit of C.P. Act was accentuated.

8. Appreciating the facts herein, in the light of the ratio in Citycorp Finance (India) Ltd case, we are only to hold that the complainant has no privity of contract with O.P.2 and that complainant is not a consumer of O.P.2 and that complaint as against OP2 is not maintainable.

Issue No.1

9. Complainant's daughter Afsana M.U. went on a one-day trip to 1st OP park along with 54 other students on 2/2/2024. While negotiating a ride she fell down and sustained grievous injury.

10. OP2 has disputed the allegation that a fall had occurred. OP1 park remained exparte, even after receipt of notice.
11. In order to substantiate their case, the complainant marked Exts. A1 to A13 as documentary evidence. Ext.A7 is a certificate issued by OP1. Ext. A7 reads as follows:

"TO WHOMSOEVER IT MAY CONCERN

It is hereby certified that an unforeseen accident happened to a minor girl aged 10 years named Ms. Afsana, D/o. Ummar, Muthangayil House Pallam, Cheruthuruthy on 02/02/24, in our park in a ride named Water Play Station. She was immediately taken to Malabar Hospital Palakkad and from there to Valluvanad Hospitals, Ottapalam for further treatment and initial expenses of hospital Rs.85412 was met by us.

*For Neo Amusements & Resorts Pvt. Ltd.
Sd/-
Director*

Place : Malampuzha

Date : 02/03/2024'

12. Ext.A7 was marked without any objection. Thus, OP1 has admitted that the child suffered a fall, that she had to be hospitalized and that they had met expenses of her treatment to an extent of Rs.85,412/-.
13. Contents of Ext.A7 prove that the child suffered a fall.

Issue Nos. 2 &3

14. In view of the conclusion arrived at in paragraphs 6 to 8 that this complaint is not maintainable against O.P.2, based on the decision of the Hon'ble Supreme Court in Citycorp Finance (India) Ltd case, these issues does not have any bearing in coming to a conclusion as regards the liability of O.P.1.

Issue No. 4

15. We hold that there is deficiency in service on the part of OP1 in failing to provide ample security for the occupants in water play station.

Issue No. 5

16. Complainant has claimed a lumpsum amount of Rs.7,50,000/- including past and future treatment expenses to his daughter. He has further claimed Rs.2 lakhs being compensation for mental agony and deficiency in service and cost of Rs.25,000/-.

Ext.A5 is the discharge bill issued from Valluvand Hospital Complex Ltd. The total expenses have come to Rs.85,412/-. This amount is the same as the amount stated in Ext.A7 certificate which OP1 has admitted to have paid for the treatment of Ms. Afsana in Valluvanad Hospital.

Amounts forming part of Ext.A3 and A4 forms part of Ext.A5. Therefore, calculating the amounts in Ext.A3 & A4 would only lead to duplication.

Ext.A13 series is 11 bills. These are bills issued from Valluvand Hospital during the period wherein she underwent treatment as well as subsequently. It is to be noted that the bills are not arranged chronologically thereby leading to much confusion since some of them are included in the amount coming in Ext.A5. After keeping aside the bills which forms part of the expenses incurred during the child's stay in hospital from 2/2/24 to 6/2/24, the sum forming part of rest of the bills is paltry. They are as below:

1. A13 (a)	-	Rs.600/-
2. A13(b)	-	Rs.200/-
3. A13 (c)	-	Rs.524/-
4. A13(d)	-	Rs.408/-
5. A13(f)	-	Rs.100/-
6. A13(g)	-	Rs.500/-
7. A13(h)	-	Rs.114/-
Total	-	Rs. 2446/-

3 bills forming part of the period covered under 2/2/2024 to 6/2/2024 is left out. Complainant has proved that he has incurred Rs.2446/- over and above what was paid by OP1 for treatment of Ms. Afsana.

17. Complainant has not adduced any evidence to show expenditure that he would incur for further treatment. Doctor who treated the child was examined as PW1. He has, in page 2 of his deposition line 9 stated that the percentage of permanently disability is 10%. Even though OP2 has tried to dislodge this opinion, we could not find

anything in the deposition which contradicts this opinion. We do not find anything in the deposition of PW1 that warrants eschewing his evidence.

18. Accordingly, we allow this complaint in part holding as herein below:

- 1) This complaint is not maintainable against OP2.
- 2) OP1 is directed to pay Rs.2446/- being the proven treatment expense together with interest @12% from 24/8/2024 till date of payment.
- 3) Complainant is entitled to a compensation of Rs.2,00,000/- (Rupees Two lakhs only).
- 4) Complainant is entitled to a cost of Rs.25,000/- (Rupees Twenty five thousand only)
- 5) OP1 is directed to comply with directives 2 to 4 within 45 days of receipt of a copy of this Order, failing which the complainant shall be entitled to a solatium of Rs.1,000/- (Rupees One thousand only) per month or part thereof from the date of this Order till the date of payment.

Pronounced in open court on this the 22nd day of June, 2026,

Sd/-
Vinay Menon V
President

Sd/-
Vidya.A
Member

Sd/-
Krishnankutty N.K.
Member

APPENDIX

Exhibits marked on the side of the complainant:

- Ext.A1 – Original Invoice bearing No. 1380 dated 2/2/2024.
- Ext.A2 – Original Receipt bearing No. 1187 dated 2/2/2024.
- Ext.A3 – Original Cash bill bearing No.177118 dated 6/2/24
- Ext.A4 – Original pharmacy bill bearing No.76757 dated 6/2/2024
- Ext.A5 – Original discharge bill dated 6/2/2024
- Ext.A6 - Copy of discharge summary dated 6/2/2024
- Ext.A7 – Original certificate dated 2/3/24
- Ext.A8 – Copy of facing sheet of Ext.B1

Ext.A9 – Print out of email communication dated 15/2/2024
Ext.A10 – Copy of lawyer's notice dated 8/4/2024
Ext.A11– Copy of aadhar card
Ext.A12 – Original disability certificate issued by PW1.
Ext.A13series – 11 original bills

Exhibits marked on the side of the opposite party:

Ext. B1 – Copy of Public liability non industrial policy issued to OP1.

Court Exhibit: Nil

Third party documents: Nil

Witness examined on the side of the complainant:

PW1 – Dr.Y.N.Koya

Witness examined on the side of the opposite party: Nil

Court Witness: Nil

Dictated to my Confidential Assistant by me and transcribed by him. Verified by me and found correct on this the 22nd day of June, 2026.

Sd/-
Vinay Menon V
President

NB: Parties are directed to take back all extra set of documents submitted in the proceedings in accordance with Regulation 20(5) of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 failing which they will be weeded out.