

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, HOOGHLY
CC OF 2021
PETITIONER
VERS
OPPOSITE PARTY

Complaint Case No. CC/20/2019
(Date of Filing : 07 Feb 2019)

1. Sumita Sengupta

85, R.K.M Bye Lane, Doctor Bagan, Chapdani, Baidyabati,
712222

Hooghly

WEST BENGAL

.....Complainant(s)

Versus

1. Dr Joy Mahanta

M.G Road, Chinsurah, 712101

Hooghly

WEST BENGAL

.....Opp.Party(s)

BEFORE:

HON'BLE MR. Debasish Bandyopadhyay PRESIDENT

HON'BLE MR. Debasis Bhattacharya MEMBER

PRESENT:

Dated : 21 Dec 2022

Final Order / Judgement
FINAL ORDER/JUDGEMENT

Presented by:-

Shri Debasish Bandyopadhyay, President.

Brief fact of this case:- This case has been filed U/s. 35 of the Consumer Protection Act, 2019 by the complainant stating that the complainant first attended with Dr. Joy Mahanta (Opposition party) for her dental treatment on 04.06.2016 and was under treatment of OP upto 25th December, 2016 . The OP had done R.C.T. one lower back tooth of Petitioner during treatment period and the petitioner felt severe pain in left lower teeth again in the month of October, 2017. Petitioner went to the Smile & Profile Dental Treatment Centre (P) Ltd, United Nursing Home, Ground Floor, Burra Bazar, Chandannagar, Dist-Hooghly, Pin-712136, to check-up as an emergency basis on 11th November, 2017 under Dr. Sourav Chakroborty, B.D.S. According Radiographical Survey Report of Smile & Profile the findings was that the R.C.T is not properly done. Due to wrong treatment, that tooth was bifurcated and other associated teeth were being damaged. According Advise of Dr. Sourav Chakroborty, the petitioner treatment(s) was extraction and the condition of that particular

tooth after improper R.C.T was very poor & no further treatment was possible with that damaged tooth. So, there was no other alternative except extraction of the tooth and the amount for extraction of the tooth was Rs.1000.00 paid by the petitioner to the Smile & Profile on 18th November, 2017 vide money receipt no.00007033.

Complainant filed the complaint petition praying direction upon the opposite party to pay a sum of Rs. 1,00,000/- as compensation for physical illness, pain, mental agony, harassment, loss of valuable time, expenditure of treatments and other expenses.

Defense Case:-The opposite party contested the case by filing written version denying inter-alia all the material allegation as leveled against him and stated that the complainant came to this OP on 04.06.2016 for dental treatment and on that date the OP initially made filing in two teeth and verbally ;discussed with the patient as to whether she wanted her left lower 2nd molar (7th tooth) extracted or to retain the same by way of Root Canal Therapy followed by full veneer porcelain fused to metal (PFM) crown i.e. Endodontic treatment and as the patient opted for such treatment IOPA (Intra Oral Periapical) radiograph was advised. Except those fillings and except that advice of IOPA no other medicine was prescribed. The patient then came on 02.07.2016 when the RCT was started. On that day the access cavity on that tooth was done and the root canals were opened and partial cleaning of the canals was done, a dressing was done on the tooth and the patient was prescribed antibiotic and pain killer and the antibiotic coverage was given to arrest any infection, if any. Thereafter the patient came to the OP on 06.07.2016 in the subsequent sitting and on that day further irrigation and disinfection of canals and preparation of canals were done and zinc oxide eugenol restoration was applied. As there was no pain no analgesic or any medicine was prescribed and thus the 2nd sitting was done satisfactorily. The patient, for the 3rd sitting, came on 11.07.2016. As the tooth was asymptomatic and the patient had no pain all the root canals were properly obturated with guttapercha points. A silver amalgam core preparation was done on the tooth. The entire RCT procedure was done strictly in conformity to the appropriate procedure as provided in the text books and the same procedure has all along been followed by this doctor to all patients in all RCTs. On the final sitting of RCT also as there was no pain, no hassle, no analgesic or any medicine was prescribed. The patient after two months came to the OP on 18.09.2016 for crown reduction and on that day also the patient came without any pain or complication and that crown reduction was done and the impression for the crown preparation was taken for getting the same prepared from a laboratory and on that day also as there was no pain or complication no analgesic or medicine was prescribed. Finally on 24.09.2016 the patient / complainant came and the PFM crown was cemented on the tooth and as the patient had no pain, no complication no medicine, whatsoever, was prescribed and the patient had no pain, no complication no medicine, thereafter the patient came to the Op on 25.12.2016 with complaint of pain and swelling around that tooth. The OP prescribed necessary medicines and thereafter the complainant did not come to this OP with any further complaint and long thereafter instead of coming to the OP who performed the RCT she went to another doctor who is of the same qualification as the OP has. Had there been any such complication relating to RCT the patient would have gone to an Endodontist i.e. an MDS degree holder in the discipline of conservative dentistry and endodontics. So, the instant case should be liable to be dismissed with costs.

Issues/points for consideration

On the basis of the pleading of the parties, the District Commission for the interest of proper and complete adjudication of this case is going to adopt the following points for consideration:-

1. Whether the complainant is the consumer of the opposite parties or not?
2. Whether this Forum/ Commission has territorial/pecuniary jurisdiction to entertain and try the case?
3. Is there any cause of action for filing this case by the complainant?
4. Whether there is any deficiency of service on the part of the opposite parties?
5. Whether the complainant is entitled to get relief which has been prayed by the complainant in this case or not?

Evidence on record

The complainant filed evidence on affidavit which is nothing but replica of complaint petition and supports the averments of the complainant in the complaint petition and denial of the written version of the opposite parties.

The answering opposite party filed evidence on affidavit which transpires the averments of the written version and so it is needless to discuss.

Argument highlighted by the ld. Lawyers of the parties

Complainant and opposite party filed written notes of argument. As per BNA the evidence on affidavit and written notes of argument of both sides are to be taken into consideration for passing final order.

Argument as advanced by the agents of the complainant and the opposite party heard in full. In course of argument ld. Lawyers of both sides have given emphasis on evidence and document produced by parties.

DECISIONS WITH REASONS

The first three issues/ points of consideration which have been framed on the ground of maintainability and/ or jurisdiction, cause of action and whether complainant is a consumer in the eye of law, are very vital issues and so these three points of consideration are clubbed together and taken up for discussion jointly at first.

Regarding these three points of consideration it is very important to note that the opposite parties even after appearance in this case and after filing written version, have not filed any petition on the ground of nonmaintainability of this case due to the reason best known to them.

Under this position this District Commission has passed the order of further hearing of this case. On this background it is also mention worthy that the opposite parties also have not filed any separate petition challenging the maintainability point, jurisdiction point and cause of action issue. The opposite parties in their written version have only pleaded the above noted points. This District Commission after going through the materials of the case record finds that the complainant is a resident of Champdani, Baidyabati, Hooghly which is lying within the territorial jurisdiction of this District Commission. Moreover, this complaint case has been filed with a claim of below 20 lakhs and this matter is clearly indicating that this District Commission has also pecuniary jurisdiction to try this case. Thus, the point of jurisdiction which has been alleged by the opposite parties cannot be accepted. Moreover, u/s 11 of the Consumer Protection Act, 1986 this District Commission has jurisdiction to try this case. The opposite parties also have raised the plea of limitation and in the written version it has been pointed out that this case is barred by limitation. But in this connection it is important to note that the provision of 24A of the Consumer Protection Act, 1986 is very important and according to the provision of Section 24A complaint case can be entertained by the District Commission or State Commission or National Commission even after expiry of 2 years if the complainant satisfies the Id. Commission that he or she has sufficient ground for not filing the case within two years. Moreover in this instant case the cause of action has been continued and thus the above noted plea of the opposite parties which has been pointed out in the written version is also not acceptable. On close examination of the pleadings of the parties it also transpires that there is cause of action for filing this case by the complainant side against the opposite parties. Moreover after going through the provisions of Section 2 (1) (d) of the Consumer Protection Act, 1986 it appears that this case is maintainable and according to the provision of Section 2 (1) (d) of the Consumer Protection Act, 1986. Complainant is a consumer in the eye of law. It is the settled principle of law that term negligence has no defined boundaries and if any medical negligence is there, whether it is pre or post-operative medical care or in follow up care, at any point of time by treating doctors or anyone else it is always open to be considered by the Commission. This legal principle has been observed by Hon'ble Apex Court in the case of Chandra Rani Akhori and others vs. M.A. Methusethupathi (Doctor and others) and it is reported in II(2022)CPJ 51 (SC).

All these factors are clearly depicting that this case is maintainable and complainant is a consumer of the opposite parties and this District Commission has territorial/ pecuniary jurisdiction to entertain and try this case and there is also cause of action for filing this case by the complainant against the opposite parties. Thus, the above noted three points of consideration are decided in favour of the complainant.

The point no. 4 is related with the question as to whether there is any deficiency in the service on the part of the opposite parties or not? The point no. 5 is connected with the question as to whether the complainant is entitled to get any relief in this case or not? These two points of consideration are interlinked and/ or interconnected with each other and for that reason these two points of consideration are clubbed together and taken up for discussion jointly.

For the purpose of deciding the fate of these two points of consideration and for the interest of getting answers of the above noted questions, there is necessity of scanning the evidence on affidavit filed by the parties and there is also necessity making scrutiny of the documents filed by the parties of this case.

On comparative studies of the evidence on affidavit filed by the complainant with the evidence on affidavit filed by the opposite parties and also after examining the interrogatories/questionnaires and their reply and on close compare of the documents filed by both parties it appears that on the following points of this case either there is admission on behalf of the both parties or the parties have not raised any dispute:

1. It is admitted fact that the complainant had been suffering from dental problem in the month of June 2016.
2. It is also admitted fact that the complainant attended with the opposite party for dental treatment.
3. There is no dispute over the issue that the complainant went to the chamber of the opposite party on 4.6.2016.
4. There is no dispute over the issue that the complainant was under the treatment of opposite party upto 25th December, 2016.
5. There is no controversy over the issue that the opposite party had done R.C.T. treatment at the affected teeth of the complainant.
6. It is also admitted fact that the complainant had not suffered any pain or infection at her teeth in course of R.C.T. treatment done by the opposite party.
7. There is no controversy over the issue that the complainant in the month of October 2017 had felt severe pain in the left lower teeth.
8. It is admitted fact that the complainant/ petitioner thereafter went to the Smile & Profile Dental Treatment Center (P) Ltd. and United Nursinghome, Burra Bazar, Chandannagore, Dist. Hooghly.
9. It is also admitted fact that the complainant went to the said dental treatment center on 11th November, 2017.
10. There is no dispute over the issue that the complainant was under the treatment of Dr. Sourav Chakraborty, BDS.
11. There is no controversy over the issue that radiographical survey was done to the complainant at the said Smile & Profile Dental Treatment Center (P) Ltd.
12. It is admitted fact that according to radiographical survey report of Smile & Profile Dental Treatment Center (P) Ltd. the R.C.T. was not properly done.
13. It is also admitted fact that Dr. Sourav Chakraborty extracted the affected teeth of the complainant as there was no other alternative way.
14. There is no dispute over the issue that both the doctor under whom the complainant had undergone medical treatment having qualification BDS.
15. There is no controversy over the issue that the complainant has not sought for any expert opinion in this case and she is totally relying upon the treatment papers of Dr. Sourav Chakraborty, BDS.
16. It is admitted fact that in this case Dr. Sourav Chakraborty has given evidence by filing evidence on affidavit.

Regarding the above noted admitted facts and information there is no necessity of passing any separate observation as it is the settled principle of law that fact admitted need not be proved. This legal principle has been embodied in Section 58 of the Evidence Act.

On the background of the above noted admitted facts and circumstances the parties of this case are differing on the point and/ or apple of discord between the parties of this case is that the complainant is alleging that due to wrong treatment of opposite party the affected teeth was bifurcated and the complainant had to suffer severe pain and sufferings and for that reason she is entitled to get compensation of Rs. 1,00,000/- from the opposite party. But on the other hand it is the defence plea of the opposite party that he has no negligence or deficiency of service in the matter of providing dental treatment to the complainant and she had no pain or no problem during R.C.T. treatment. Over this issue and/ or in the matter of arriving at just and proper decision regarding the difference of opinion and/ or apple of discord between the parties, the evidence given by Dr. Sourav Chakraborty is playing a vital role. According to the evidence of this witness there are many reasons for the failure of R.C.T. due to poor oral hygiene, systemic causes, calcium and vitamin D3 deficiency. It has also been stated by this witness that he has not endorsed anywhere in his treatment papers that the doctor who did R.C.T. was negligent in treating the patient. This part of the evidence is clearly reflecting that there was no fault on the part of the op, doctor.

Thus, it is crystal clear that the witness Dr. Sourav Chakraborty who provided medical treatment to the complainant in his evidence has totally destroyed/ demolished the case of the complainant. So, it is crystal clear that the complainant has failed to prove her case in respect of points of consideration nos. 4 and 5 and so this District Commission is of the view that the complainant is not entitled to get any relief which she has prayed in this case. So, this District Commission has no other way but to dismiss this case on contest.

In the result it is accordingly,

ordered

that the complaint case being no. 20 of 2019 be and the same is dismissed on contest but in part.

No order is passed as to costs.

Let a plain copy of this order be supplied free of cost to the parties/their Id. Advocates/Agents on record by hand under proper acknowledgement/ sent by ordinary post for information and necessary action.

The Final Order will be available in the following website www.confonet.nic.in.

Dictated and corrected by me.

**[HON'BLE MR. Debasish Bandyopadhyay]
PRESIDENT**

**[HON'BLE MR. Debasis Bhattacharya]
MEMBER**