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Pathak. Being aggrieved by the order in the Consumer Complaint No. CC/ 16/ 274 passed by the Learned District Consumer Disputes Redressal Forum, Alibaug, partly allowing the complaint, awarding compensation Rs.2 Lakh to the complainant towards treatment expenditure, mental and physical harassment; the present appeal has been preferred by the original opposite party, the dentist; challenging the legality and validity of the judgment and the order.

2. Facts necessary for deciding this appeal are as under,

The original Complainant Shri.Ashutosh Pathak, consulted the appellant dentist Dr.Sangeeta Devikar for correction of his deformed teeth and for gaps in the teeth and according to the suggestion started treatment from 26th September 2013. The total agreed upon consideration for the treatment was Rs.25,000/- out of which the complainant paid Rs.19,050/- till 28th February 2014. Since the patient was not happy about the treatment he received at the hands of the appellant, he consulted at KBH Dental College and Hospital, Nashik. After knowing that the expected correction in teeth has not happened and now it is difficult to achieve midline alignment, the complainant also consulted the Orthodontists at Shri Guruji Rugnalaya, Nashik. Being aggrieved by the treatment given by the dentist Dr.Devikar, the complainant filed complaint at District Consumer Disputes Redressal Forum, Alibaug on 14th August 2016 and demanded Rs.20 Lakh towards the negligence and deficiency in service from the opposite party doctor. The opposite party, Dr.Sangeeta Devikar did not appear in the forum even after receiving the notice form the District Consumer Forum, Alibaug. Based on the documents submitted and submissions made by the complainant, learned forum allowed the complaint, no. CC/16/274 and awarded Rs.2 Lakh to the complainant, towards deficiency in service and medical negligence by the opposite party doctor. Aggrieved by this judgment and order dated 30th

November 2016, the opposite party filed this appeal at State Consumer Disputes Redressal Commission which was admitted on 26th September 2017. The same appeal was taken up for hearing and heard both the parties.

3. Considering the rival contentions of both parties, submissions made before us, considering record and scope of the appeal, following points arise for our determination and our findings thereon are noted against them for the reasons given below:

POINTS:

Sr.No.	Point	Findings
1.	Whether Respondent- Original Complainant has proved that there was deficiency in service and medical negligence by the opposite parties? A. Whether practicing Orthodontics without having qualification recognized by Dental Council of India is negligence? B. Whether non maintenance of treatment record by Dentist is negligence?	Yes
2.	Whether the order of District Forum is correct, just and Legal?	Yes
3.	Whether the Respondent- original complainant is entitled for compensation?	Yes
4.	What Order?	As per the final order

4. We have reviewed the concept and settled principles in deciding the negligence by highly skilled medical professionals. The concept of

medical negligence is being dealt with settled principles of the law that govern it. Reasonable degree of care and skill means that the degree of care and competence that an "ordinary competent member of the profession who professes to have those skills would exercise in the circumstance in question." The burden of proof is correspondingly greater on the person who alleges negligence against a doctor than a charge of negligence against the driver of motor car.

5. The liability of a doctor arises not when the patient has suffered any injury, when he is treated in good faith but when the injury has resulted due to the conduct of the doctor, which has fallen below that of reasonable care. Thus, the doctor is not liable for every injury suffered by a patient. He is liable for only those that are a consequence of a breach of his duty. Hence, once the existence of a duty has been established, the complainant must still prove the breach of duty and the causation. In case there is no breach or the breach did not cause the damage, the doctor will not be liable. In order to show the breach of duty, the burden on the complainant would be to first show what is considered as reasonable under those circumstances and then that the conduct of the doctor was below this degree.

REASONS

6. As to POINT No.1-Medical Negligence and Deficiency in service

Learned advocate, Adv.Darandale for the appellant submitted that, the District Consumer Forum has erred in allowing the complaint and awarding compensation to the complainant as the appellant did not receive the notice from the District Consumer Disputes Redressal Forum and the matter was decided ex parte. Learned advocate further submitted that the complainant completed only 7 months of follow up for the dental treatment when advised duration was more than one and half year. Since

the appellant doctor completed the one year advanced course in Clinical Orthodontics in 2008 after completion of BDS (basic graduation in Dental Sciences), the appellant was well versed with the orthodontic techniques of dental treatment. Hence inviting our attention to the certificate issued by Academy of Advanced Dental Studies from Mumbai that mentions “hands on training program in Clinical Orthodontics” for completion of one year programme, appellant was competent to treat the patient. The advocate for appellant also submitted that the treatment plan was already communicated to the patient before the treatment was started and the same was being followed, while the patient- original complainant left the treatment after 7 months.

7. The respondent, original complainant appeared in person and submitted that, the appellant doctor though projected herself as specialized in Orthodontics, the certificate course pursued by her is not recognised by Dental Council of India. He further submitted that, the treatment papers from Dr.Sangeeta Devikar consist of papers, pages 26 to 30, which include payment receipts and there are no details of the treatment planned and the progress of the treatment. He also invited our attention to the case treatment record from the KBH Dental College pages 31 to 34, which mentions that, “Irritation of Buccal Mucosa due to brackets”. The respondent submitted that, he had to visit other dental doctors as due to the treatment given by the appellant, there was severe pain in teeth and jaw. Hence, respondent submitted that the District Consumer Forum was correct in considering the problem in the treatment given by the appellant and further relief obtained from other dental doctors. He therefore submitted that the judgment and order by the District Consumer Forum is correct and legal and prayed for dismissal of the appeal filed by the appellant.

8. The respondent submitted that while replying to the appeal memo, he filed the reply and page 18 of the said reply, he has mentioned about the non-acceptance by the appellant of the summons from the District Consumer Forum. He invited our attention to the pages 91 to 95, in which it was clearly mentioned that, the intimation about the registered summons was issued by the postman on 7th July 2016, but as she did not collect the same from the post in spite of the intimation and hence it can be inferred that actually she refused to accept. And so this is to be treated as delivery of the summons to the opposite party. We accept this contention and so observe that the decision of learned District Consumer Forum for “ex parte hearing” was right. Hence the prayer of the appellant for remanding back to the District Forum cannot be granted.
9. The respondent, original complainant invited our attention to the dental X Rays submitted on record dated 19-09-2014 and 27-07-2016. Also to the relevant pages of medical literature submitted by him as follows,
 - A. Orthodontics: Diagnosis and Management of Malocclusion and Dentofacial Deformities by Om Prakash Kharbanda. Pages 50-59
 - B. Textbook of Orthodontics, Edited by Gurkeerat Singh, Second Edition, publisher JAYPEE Pages 61-69
 - C. Orthodontic Diagnosis, A peer Reviewed Publication by Nona Naghavi DDS and Ruben Alcazar DDS ,
https://www.dentalacademyofce.com/courses/1987/pdf/1009cei_ortho_web.pdf Pages 73-77
 - D. Clinical Practice Guidelines for Orthodontics and Dentofacial Orthopaedics by American Association of Orthodontists Pages 78-83
 - E. Orthodontics: A Review, Article from dentalcare.com written by Calogero Dolce DDS and Melissa Alfonso DMD, MS Pages 85-88Surprisingly, the patient who is layman as considered to the medical science, filed the medical literature as stated above, describing the

details of diagnostic evaluation in Orthodontics and the treatment-how treatment planning to be done and record is to be maintained. The respondent, original complainant submitted that, the appellant-treating dentist Dr.Devikar has not followed the protocols as described in the books and hence was negligent in treating him.

10. The respondent also invited our attention to the “Revised Dentists (Code of Ethics) Regulations, 2014, Dental Council of India Notification, published on 27th June 2014 , Sections 3.3.1 and 3.3.2 as follows,

“3.3 Maintenance of Dental/Medical records:

(3.3.1) Every Dental surgeon shall maintain the relevant records pertaining to his out- patients and inpatients (wherever applicable). These records must be preserved for a minimum period of three years from the date of commencement of the treatment in a format determined by the Council or accepted as a standard mode of documentation.

(3.3.2) If any request is made for medical or dental records either by the patients/authorized attendant or legal authorities involved, the same may be issued to the competent authority within 72 hours after having obtained a valid receipt for all documents. It is prudent to keep certified photocopies / carbon copies of such submissions.”

11. During the course of hearings, on 2nd November 2018, the appellant was asked to produce certificate to show that she is competent to carry out the treatment in Orthodontics and also the appellant was asked on 15th April 2019 to produce record of visit by the respondent- original complainant and also record of treatment, thus opportunity was provided to the appellant to submit the treatment record that was not submitted in District Forum hearing. Similarly, on 15th April 2019 the respondent-original complainant was asked to produce expert opinion to know about whether the treatment was wrong in manner. On 25th June 2019, the appellant

brought the record of visit and treatment of respondent, while the respondent- complainant could not procure the expert opinion.

12. We have gone through the complainant visit record and treatment record submitted by the appellant as well as certificate of completion of one year hands on training in Clinical Orthodontics by the appellant. Then appellant mentioned in the supporting affidavit that the “true copies of the history papers of the Respondent Record” are being submitted. Hand written pages, on the papers supplied by Pharma Company cannot be considered as proper record of treatment. Thus it is our opinion that, the appellant has not maintained proper record of treatment, there is no record of the information given to the patient and his acceptance signed in the form of Informed Consent. And hence only submissions by appellant without authentic documents cannot be accepted.

13. Also as already mentioned in upper para, the certificate issued by Academy of Advanced Dental Studies, mentioning that the appellant has completed one year hands on training programme in Clinical Orthodontics in the Academy at Mumbai cannot be accepted as the email reply by the Secretary of Dental Council of India, dated 18th June 2018 that this program was not recognized by Dental Council of India. Also the same email, has answered the question as follows,

“If a person has BDS degree recognized by Dental Council of India, but does not have Dental Council of India recognized postgraduate degree in Orthodontics or Dental Council recognized postgraduate degree in any other stream of Dentistry, then is such a person legally eligible to render Orthodontic Services?”

The answer to this question is “No” by the Dental Council of India. Reply by the Dental Council of India. Page 110 of compilation.

14. While answering the question of whether there was medical negligence and deficiency in service by highly qualified dental professional in the instant case , we subdivided this in to two,

A. Whether practicing Orthodontics without having qualification recognized by Dental Council of India is negligence?

B. Whether non maintenance of treatment record by Dentist is negligence?

It is very clear that the Courts will not decide the correctness of the treatment given by any medical professional. In the instant case, though expert opinion was not submitted by the respondent-original complainant , it was not necessary as there was deficiency in service in treating patient with recognized qualification in that specialty and not maintaining the treatment record. Considering the above discussion, we are of the opinion that, practicing super specialty in Dentistry i.e. Orthodontics without formal, recognized post graduate qualification in Orthodontics is considered as medical negligence by the Dental Professional. Additionally, not maintaining proper treatment record as prescribed in the Code of Dental Ethics to be considered as Medical Negligence and deficiency in service by the Dental Professional under Consumer Protection Act 1986. Hence we answer the **POINT no.1** as **AFFIRMATIVE**.

15. As to POINT No.2 - Judgment and order by District Consumer Forum

Learned District Consumer Forum, Alibaug, had considered the treatment record of KBH Dental College, Nashik, where complainant had received further corrective treatment. Also rightly considered that, since the summons by the Forum was not accepted by the appellant in spite of due intimation and then decided to proceed *ex parte*, was the right decision.

As discussed previously, there is no need to remand back the matter as the explanation and reasoning by learned District Forum is correct, just and legal. Hence we answer the **POINT no. 2** as **AFFIRMATIVE**.

16. As to POINT No.3 Entitlement for compensation

In view of the discussion in Point nos. 1 and 2, it is very clear that there was deficiency in service by the appellant that was proved by the respondent- original complainant, we don't find any reason to interfere with the reasoned judgment and order by learned District Consumer Forum of Alibaug. The respondent- original complainant is entitled for the compensation Rs.2 Lakh as passed in the order by the learned District Consumer Disputes Redressal Forum. Hence we answer the POINT no.3 as **AFFIRMATIVE**.

17. As to POINT No.4 Final Order

In view of the above discussion, we pass the final order as follows.

ORDER

1. The Appeal is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand only) to be paid by the appellant to the respondent.
2. Free certified copies of the order be furnished to the parties forthwith.

Pronounced

Dated 18th August 2020

[JUSTICE A.P.BHANGALE]
PRESIDENT

[DR.S.K.KAKADE]
MEMBER