

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1837 OF 2019

(Against the Order dated 13/05/2019 in Appeal No. 947/2018 of the State Commission
Rajasthan)

1. RUCHIKA SHARMA

THROUGH POWER OF ATTORNEY, SMT. LOKESH
SHARMA, R/O. B-45, VAISHALI NAGAR,
JAIPUR
RAJASTHAN

.....Petitioner(s)

Versus

1. DR. DORWAL AND DENTAL HOSPITAL & ANR.

THROUGH DR. RAKESH DORWAL, DENTAL HOSPITAL,
JAIPUR
RAJASTHAN

2. DR. RAKESH DORWAL

S/O. MR. O.P. SHARMA, R/O. C-382, VAISHALI NAGAR,
JAIPUR
RAJASTHAN

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. MADHURENDRA KUMAR,
ADVOCATE
ALONG WITH MRS. KAVITA SHAMRA, (MOTHER &
A/R OF PETITIONER)

FOR THE RESPONDENT :

FOR RESPONDENTS : MS. AMBIKA DESAI, ADVOCATE

Dated : 31 May 2024

ORDER

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 13.05.2019, passed by the State Consumer Disputes Redressal Commission, Rajasthan (the State Commission) in First Appeal No. 947 of 2018. In this appeal, the Respondent/OP appeal was allowed, thereby setting aside the Order dated 22.10.2018, passed by the District Consumer Disputes Redressal, Jaipur ("District Forum") in Consumer Complaint No. 567 of 2015, wherein the Complaint filed by the Complainant was allowed.

2. For convenience, the parties in the present matter are denoted as per the Consumer Complaint before the District Forum. Ruchika Sharma through Attorney Mrs. Kavita Shamra

is the Complainant. Dr. Dorwal and Dental Hospital (OP-1) and Dr. Rakesh Dorwal (OP-2) are identified as Opposite Parties (OPs) doctor.

3. Brief facts of the case, as per the Complainant, are that she resides in Australia and underwent dental treatment by OP-2 Doctor at the OP-1 Hospital on 07.03.2014. On examination, OP-2 advised root canal treatment (RCT) and a dental cap for the damaged teeth. Accordingly, the OPs received various payments on different dates from her. However, the OPs failed to provide a consolidated bill even after the treatment was completed on 27.03.2014, causing her parents to visit the OPs Hospital multiple times. Consequently, her father, who was a bank employee was unable to get reimbursement of treatment cost of Rs.19,400/-. Also, OPs did not properly treat her, necessitating further dental treatment in Australia, including capping costing Rs.6,760/-. This OPs conduct constituted deficiency in service and unfair trade practice. Being aggrieved, she, through her mother and attorney holder Mrs. Kavita Sharma, filed CC No. 567 of 2015 in the District Forum, seeking compensation of Rs.26,160/- for the treatment expenses along with litigation costs.

Top of Form4. In reply before the District Forum, the OPs acknowledged providing dental hygiene treatment to the Complainant at OP-2 Hospital. Her root canal treatment (RCT) was initiated by Preeti Singh on 21.03.2014 and completed on 22.03.2014. A crown for the RCT-treated tooth was recommended and subsequently applied to tooth number 36 on 27.03.2014. Upon completion of the treatment, a lump sum bill No. 898 for Rs.12,000/- was issued on 27.03.2014. She initially stated her treatment was successful. In the first week of May 2014, she requested to review the treatment completed in March 2014 and sought revised bill for Rs.20,000/- instead of Rs.12,000/-, which the OPs refused. OPs asserted that there was no deficiency in service and sought dismissal of the complaint.

5. The District Forum vide Order dated 22.10.2018 allowed the complaint, finding the OPs liable for deficiency in service and unfair trade practices in treating the complainant. The Forum directed the OPs to pay Rs. 12,000/- towards treatment expenses along with interest at 9% per annum. Additionally, she was awarded Rs. 5,000/- as compensation for harassment and Rs. 3,000/- as litigation costs.

6. Being aggrieved by the District Forum order, the OPs/ Respondents filed Appeal No. 947 of 2018 and the State Commission vide order dated 13.05.2019 allowed the appeal, ruling that it was not medical negligence. The Commission found no evidence of negligence on the part of the OPs, stating that there were no circumstances indicating that the OPs had failed to use due skill or care or had acted carelessly. Thus, the State Commission set aside the order dated 22.10.2018, passed by the District Forum.

7. Being dissatisfied with the impugned order dated 13.05.2019, passed by the learned State Commission, the Petitioner/ Complainant, through her mother and attorney Mrs. Kavita

Sharma, filed the instant Revision Petition bearing No. 1837 of 2019.

8. The Learned Counsel for the Petitioner reiterated the facts of the case and emphasized that the State Commission failed to consider the detailed order dated 20.10.2018, rightly passed by the District Forum, which held the Respondents liable for deficiency in service and unfair trade practices in treating her. The learned District Forum correctly noted that if the Respondents had provided a bill, there would have been no reason for her mother to file an FIR against the Respondents. Further, if the treatment provided by the Respondents had been adequate, the Petitioner would not have needed to spend Rs.6,760/- in Australia to have her teeth capped again. The Respondents have not presented any medical evidence to prove that they treated the Petitioner properly. Therefore, the present Revision Petition should be allowed.

9. On the other hand, the learned Counsel for OPs reiterated the facts and the evidence previously filed. He asserted that the District Forum did not properly consider important aspect that her father is a bank employee, and under the Bank Rules, such expenses incurred are reimbursed by the bank. Her parents visited OP hospital several times to obtain consolidated bills of Rs.20,000/- instead of the actual fee charged by the OPs, which was only Rs. 12,000/-. They also attempted to show as if the treatment was given in May 2014, when it was completed in March 2014 itself. OPs expressed inability to provide a consolidated bill as they had already filed their Income Tax return for the year 2013-14. She thus filed a complaint before the District Forum on vague and baseless grounds.

10. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

11. The primary issue in this case is to examine whether there was deficiency in the dental treatment and the bills provided to the Complainant by the OPs. The Complainant alleged deficiency in the treatment, leading to additional expenses and inconvenience, and sought compensation for the purported lapses. On the other hand, the Respondents asserted that they provided appropriate treatment and that any discrepancies in billing were due to procedural issues rather than any negligence on their part. Thus, the main issue is whether the treatment provided to her was within the accepted standards and whether her grievances warrant compensation.

12. Undisputedly, the Complainant underwent dental treatment at the OPs hospital, including root canal treatment (RCT) and dental crown. However, issues arose regarding the treatment process, billing and subsequent dental care. The Complainant contended that the

treatment was not satisfactory, leading to the need for further dental treatment, including capping of teeth in Australia. Additionally, there were concerns regarding consolidated bill and difficulties in obtaining reimbursement from the Complainant's employer, a bank. Initially, the District Forum ruled in favor of the Complainant, finding the Respondents liable for deficiency in service and unfair trade practices, and awarded compensation for treatment expenses, mental harassment, and litigation costs. However, on Appeal, the State Commission overturned this decision, concluding that there was no evidence of negligence on the part of the Respondents.

13. Hon'ble Supreme Court laid down certain duties of the doctor. In the case of **Dr. Laxman Balkrishan Joshi Vs. Dr. Triambak Bapu Godbole and Anr.**, AIR 1969 SC 128 it was held that:

"The duties which a doctor owes to his patient are clear. A person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, viz., a duty of care in deciding whether to undertake the case, a duty of care in deciding whether treatment to give or a duty of care in the administration of that treatment. A breach of any of those duties gives a right of action for negligence to the patient. The practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged. In the light of the particular circumstances of each case is what the law requires.

14. The Hon'ble Supreme Court in **Jacob Mathew v. State of Punjab**, (2005) SSC (Crl) 1369 which followed the Bolam's principles and observed that:-

When a patient dies or suffers some mishap, there is a tendency to blame the doctor for this. Things have gone wrong and, therefore, somebody must be punished for it. However, it is well known that even the best professionals, what to say of the average professional, sometimes have failures. A lawyer cannot win every case in his professional career but surely he cannot be penalized for losing a case provided he appeared in it and made his submissions."

"25.....At times, the professional is confronted with making a choice between the devil and the deep sea and he has to choose the lesser evil. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend on the facts and circumstances of a given case. The usual practice prevalent nowadays is to obtain the consent of

the patient or of the person in-charge of the patient if the patient is not be in a position to give consent before adopting a given procedure. So long as it can be found that the procedure which was in fact adopted was one which was acceptable to medical science as on that date, the medical practitioner cannot be held negligent merely because he chose to follow one procedure and not another and the result was a failure."

15. The Hon'ble Supreme Court in *Devarakonda Suryasesha Mani v Care Hospital, Institute of Medical Sciences IV* (2022) CPJ 7 (SC) has held as below:

"..2. Unless the appellants are able to establish before this Court any specific course of conduct suggesting a lack of due medical attention and care, it would not be possible for the Court to second-guess the medical judgment of the doctors on the line of medical treatment which was administered to the spouse of the first appellant. In the absence of any such material disclosing medical negligence, we find no justification to form a view at variance with the view which was taken by the NCDRC. Every death in an institutionalized environment of a hospital does not necessarily amount to medical negligence on a hypothetical assumption of lack of due medical care."

16. Further the Hon'ble Supreme Court in *Achutrao Haribhau Khodwa v. State of Maharashtra* (1996) 2 SCC 634 has held:

"The skill of medical practitioners differs from doctor to doctor. The very nature of the profession is such that there may be more than one course of treatment which may be advisable for treating a patient. Courts would indeed be slow in attributing negligence on the part of a doctor if he has performed his duties to the best of his ability and with due care and caution. Medical opinion may differ with regard to the course of action to be taken by a doctor treating a patient, but as long as a doctor acts in a manner which is acceptable to the medical profession, and the Court finds that he has attended on the patient with due care skill and diligence and if the patient still does not survive or suffers a permanent ailment, it would be difficult to hold the doctor to be guilty of negligence."

17. Based on the discussion above, there is nothing substantial that has been brought on record by the Complainant to establish that the Respondent Doctor failed to fulfill his duty of care in providing dental treatment to the Complainant in accordance with the reasonable standard of medical practice. Or that any receipts for which she is entitled to were not issued. Therefore, neither any deficiency in service nor unfair trade practice is established.

18. Therefore, based on the facts and circumstances of the case, I do not find any infirmity or illegality in the impugned order dated 13.05.2019 passed by the learned State Commission. The Revision Petition No. 1837 of 2019 is, therefore, dismissed.

19. There shall be no order as to costs.

20. All pending Applications, if any, also stand disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER