

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
11A, Mirza Ghalib Street, Kolkata - 700087**

**First Appeal No. A/328/2022
(Date of Filing : 19 Dec 2022)**

**(Arisen out of Order Dated 30/11/2022 in Case No. Complaint Case No. CC/67/2015 of District
Murshidabad)**

1. Dr. Prasenjit Das

11, K.N. Road, Girjer Moar (Beside Berhampore Church), P.O.
& P.S.- Berhampore, Pin- 742 101.

.....Appellant(s)

Versus

1. Smt. Aditi Sarkar(Minor)

51/1/A, K.K. Banerjee Road, P.O. & P.S.- Berhampore,
Kolkata- 742 101. Represented by her father.

2. Mr. Ashok Kumar Sarkar

51/1/A, K.K. Banerjee Road, P.O. & P.S.- Berhampore,
Kolkata- 742 101.

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE MANOJIT MANDAL PRESIDENT

**PRESENT: Ms. Sucheta Bhatta, Ms. Sweta Bhatta, Advocate for the Appellant 1
Subimal Sarkar (A/R), Advocate for the Respondent 1**

Dated : 24 Jun 2024

Final Order / Judgement

HON'BLE MR. JUSTICE MANOJIT MANDAL, PRESIDENT

1. This Appeal has been filed by the appellant/opposite party against the respondents/complainants challenging the impugned order dated 30.11.2022 passed by the learned District Consumer Disputes Redressal Commission, Murshidabad at Berhampore, (in short, "the District Commission") in connection with Consumer Case No. CC/67/2015 (hereinafter referred to as the 'said case') whereby the Ld. District Commission allowed the complaint case filed by the respondents/complainants.
2. The respondents/complainants instituted the said complaint case being No. CC/67/2015 against the appellant/opposite party praying for the following reliefs:-
 1. *Your petitioner is entitled to get compensation of Rs.5,00,000/- (Rupees Five Lakh) only for deficiency in service, harassment and mental agony suffered by the complainant due to illegal act and action on the part of the opposite party.*

2. *Your petitioner further prays that the opposite party is liable to compensate to the complainant for huge monetary loss in his service cause by the opposite party.*
3. The appellant/opposite party entered appearance in the said case and contested the case by filing written version.
4. Respondents/Complainants and the appellant/opposite party filed their evidence on affidavit and both sides filed questionnaires and their replies in support of their case.
5. After hearing both sides and considering the facts and circumstances of the case, the learned District Commission was pleased to allow the said complaint case being No. CC/67/2015 by the order impugned which is reproduced as under:

“That the Complaint Case No. CC/67/2015 be and the same is allowed on contest against the OP, Dr. Prasenjit Das. The Complainans are entitled to get Rs.3,00,000/- (Three lakh) only from the OP Dr. Prasenjit Das.

OP Dr. Prasenjit Das is directed to pay the compensation amounting Rs.3,00,000/- (Three Lakh) only to the Complainant with 45 days from the date of this order in default OP shall pay the compensation amount of Rs.3,00,000/- (Rupees three lakh) only along with interest @ 6% P.A. with effect from the date of this order till the realization of the money.

Let plain copy of this order be supplied free of cost, to each of the parties/Ld. Advocate/Agent on record, by hand/by post under proper acknowledgement as per rules, for information and necessary action.

6. Being aggrieved by and dissatisfied with the order dated 30.11.2022 passed by the learned District Commission, the appellant/opposite party has preferred the instant Appeal.
7. The learned Advocate appearing for the appellant has argued that the learned District Commission has failed to appreciate the exact merit of the case and erroneously passed the impugned order dated 30.11.2022 in the said case brought by the respondents before the learned District Commission.
8. He has further argued that the learned District Commission has failed to appreciate that the appellant after due care and careful technical observations informed the Respondent No. 2 being the father of the

patient herein, the entire line of treatment in detail in written and oral and did not conceal any facts regarding the oral health of the patient. The learned Advocate appearing for the appellant has further urged that there did not occur any deficiency in service as the complainants stopped getting treatment from the doctor.

9. He has further argued that the deficiency in service has to be distinguished from the tortuous act of a respondent and that it is an established proposition of law that the complainant must prove his case independently. He has further urged that the learned District Commission below has failed to appreciate that the complainants have failed to prove the 4 'D's of Medical Negligence, viz., the duty of care, Dereliction of duty, Direct Causation and damages. He has further urged that a simple lack of care, an error of judgment or an incident is not a proof of negligence on the part of a doctor so long as the doctor follows a practice acceptable to the profession and cannot be held liable for negligence or deficiency in service merely because a better alternative course of treatment was available or a more skilled doctor would not have chosen to follow or resort to that practice which the appellant followed. He has further urged that learned District Commission ought to have considered that Orthodontists cannot be separately interpreted and it comes well within the purview of Bachelor of Dentistry and that the said Doctor was already possessing the degree and required experience to commute such treatment. So, the Appeal should be allowed and the impugned order should be set aside.

10. On the other hand, the authorized representative appearing for the respondents has argued that Respondent No. 2 Ashok Kumar Sarkar took his minor daughter i.e., Aditi Sarkar to the chamber of the appellant for seeking treatment of teeth of his daughter as his daughter was facing few problems in her teeth such as uneven and slightly forwarding upper teeth. He has further urged that the respondents subsequently came to know that Orthodontists are the competent persons to provide such type of treatment. He has further urged that appellant is not an Orthodontist and he is a dentist in spite of that, the appellant started the treatment without following actual process of treatment for straightening and rearranging her teeth. He has further urged that straightening crop teeth is Orthodontic treatment. Such treatment might be done by an Orthodontist only. He has further urged that in the present case, the appellant might recommend the patient to a specialist and/or to Orthodontist. He has further urged that Orthodontist will examine the patient's mouth, teeth and jaw and assess her bite. He has further argued that the x-ray of mouth will

be taken and mould of patient's teeth will be made before the treatment. He has further urged that no pecuniary measures were taken before the treatment and very hastily the maltreatment was initiated.

11. The authorized representative of the respondents has further argued that the learned District Commission has correctly viewed that there was negligence and deficiency in treatment by the appellant. So, the impugned order should be sustained.
12. Upon hearing both sides and on careful perusal of the materials on record, it appears to me that it is an admitted position that the complainant/respondent No. 2 Ashok Kumar Sarkar took his minor daughter Aditi Sarkar (complainant No. 1) to the chamber of the appellant/respondent Dr. Prasenjit Das for seeking treatment of teeth of his daughter on 18.08.2014. It is also an admitted position that on 18.08.2014, the opposite party doctor extracted/uprooted a tooth which is vernacularly said "Kukur Dant", from the gum of the respondent No. 1, Aditi Sarkar and realised Rs.200/- from the complainant No. 2. It is also an admitted position that subsequently, both the respondents met with the appellant/doctor as per his advice on 30.08.2014, 01.09.2014, 04.09.2014, 10.09.2014, 04.10.2014, 08.10.2014, 01.11.2014, 29.11.2014, 13.12.2014 and 10.02.2015 for treatment.
13. The case of the complainants is that appellant doctor/opposite party did not render his duties with full care. It is the also the case of the complainants that the fraudulent act and action of the opposite party are only to earn illegal huge monetary gain at the cost of life of the patient. The appellant is guilty of professional misconduct and deficiency in service in respect of which irresponsible for deficiency in service and for harassment, mental agony suffered by the complainant No. 2 as well as the daughter. The appellant/doctor in his written version has denied the same.
14. The specific case of the opposite party is that on 18.08.2014 when the complainants came to his chamber, the appellant met the complainants and stated the method of process of treatment orally as well as by writing to the complainant.
15. Upon hearing both sides, on careful perusal of the materials on record, I find that admittedly, the appellant has not obtained written consent from the respondent No. 2 before commencement the treatment for straightening and rearranging the teeth of respondent No. 1 as required under Chapter 7 of the Indian Medical Council Act, 1956 (Professional Conduct and Ethics) Regulations, 2002.
16. Therefore, from the material on record it has to be construed that the appellant has done straightening and rearranging the teeth of the

respondent No. 1 without obtaining any consent from the complainants as required under the law which amounts to medical negligence.

17. The Authorized Representative of the complainants has submitted that before starting treatment, no x-ray of mouth was taken, no precautionary measure was also taken before starting treatment by the appellant and very hastily the maltreatment was initiated. On going through the record I find that there are substance in the submission as made by the learned Authorized Representative appearing for the respondents.
18. The patient Aditi Sarkar visited the chamber of the doctor on 18.08.2014 for the first time and on that date, the treatment of the said patient was done by the appellant. There is no whisper in the prescription issued by the Dr. Prasenjit Das that the appellant Dr. Prasenjit das, did X-ray of the mouth of the respondent No. 1. Therefore, it may be held that the appellant starting the treatment for straightening and rearranging the teeth of the appellant without doing any X-ray of her mouth. Taking of X-ray before performing the treatment for straightening and rearranging the teeth is very important to know the internal structure of the organs. I have already held that no pre-operation X-ray of the teeth was taken by the appellant who performed the straightening and rearranging the teeth of the respondent No. 1. The failure to take pre-operation X-ray of the teeth certainly amounts to gross negligence on the part of the appellant. Further, the appellant has not adduced any evidence to show that the straightening and rearranging the teeth can be performed without pre-operation of X-ray of mouth and or no precautionary measure are required for the treatment of straightening and rearranging the teeth of the complainant No. 1.
19. The learned Lawyer appearing for the appellant has argued that the appellant is a qualified dentist and he has a degree of BDS. He has further urged that a BDS dentist can provide treatment of the patient for straightening and rearranging the teeth. In support of his argument, he has drawn the attention of Rule 8.33 of the Gazette of India dated 27.07.2014 wherein it was written that a dental surgeon shall not claim to be a specialist either through displayed signs on the name board and/or the office stationary (visiting cards, letterheads, etc.,) unless he has a special qualification (which is recognized by the Council) in that Speciality. A Dental Surgeon can however practice all branches of Dentistry provided he shows adequate qualification, competence and bona fide training in the concerned branch or branches.
20. On the other hand, authorized representative of the respondents has submitted that the appellant is dentist having qualification of BDS. He

has further submitted that the prescription issued by the appellant does not bear the registration number of the appellant. He has further submitted that the appellant being a simple dentist cannot provide treatment for straightening and rearranging the teeth. Only an Orthodontist or specialist can provide treatment of the patient for straightening and rearranging the teeth. In support of his argument, he has drawn the attention of this Commission towards the Article with regard to the proper treatment of Orthodontics.

21. Upon hearing both sides and on consideration of the materials available on record, I find that the prescription issued by the appellant goes to show that the appellant is a dental surgeon having qualification of B.D.S degree. The said prescription also does not bear any registration number of the appellant doctor. The prescription issued by Dr. Prasenjit Das also does not bear anything to the effect that the appellant has sufficient knowledge and qualification and competence and bona fide training in the matter of treatment for straightening and rearranging the teeth of the patient. So, the prescription issued by the appellant is defective one.
22. The Dentists and Orthodontists are doctors who are specialized in oral health care. Doctors who study general dentistry are trained to diagnosis and treat conditions of gums, teeth, tongue and mouth.
23. On the other hand, the Orthodontists also receive this training, but they get additional education in order to specialize in diagnosing and treating misalignment of teeth and jaws.
24. The Dentists provide the following care:
 - Conduct and interpret dental x-rays
 - Fill cavities
 - Extract teeth
 - Repair cracked teeth
 - Promote oral health and oral hygiene
 - Fill and bond teeth
 - Treat gum disease, such as gingivitis
 - Prescribe treatment, including prescription drugs, for oral health conditions
 - Whiten teeth
 - Install crowns or veneers
 - Oversee the development of children's teeth
 - Perform oral surgery, etc.

25. On the other hand, Orthodontics provide the following care
- Create a treatment plan that includes braces and retainers
 - Perform teeth straightening surgery
 - Install dental appliances, such as braces, palatal expanders, orthodontic headgear, or Herbst appliances
26. I also find that both dentists and Orthodontics get a lot on the same education, but the Orthodontics are required to receive an additional educational qualification before going into practice.
27. Now, I shall have to consider as to whether practising Dentists without having qualification and bona fide recognized by Dental Council of India can perform teeth straightening surgery and rearranging teeth and if perform whether it is negligence or not?
28. The overwhelming evidence on record goes to show that there was no improvement after treatment and Respondent No. 1 is getting suffering and defects on the face. The Respondent No. 1 feels very uneasy to take food.
29. This fact proves that the appellant has not considered and treated the condition of gums prior or during Orthodontic treatment of the Respondent No. 1. In the result, the respondents have rightly claimed for medical negligence.
30. These incidents lead to a claim for medical negligence. The appellant as a dentist has provided treatment that falls below the standard of them. The appellant provided Orthodontic treatment of the respondent No. 1 though the appellant has no sufficient qualification, competence and bona fide training in the concern of Orthodontic treatment as is required under the Rules of Dental Council of India.
31. It is very clear that the Commission 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 complainants/respondents, it was not necessary as there was deficiency in service in treating patient with recognized qualification in that speciality and not maintaining the treatment record. Based on the above discussion, I am of the opinion that practising super speciality in dentistry i.e., Orthodontics without formal, recognized postgraduate qualification in Orthodontics is considered as medical negligence by the Dental Professional. Admittedly, 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 the Consumer Protection Act. So, there is

medical negligence and deficiency in service in the treatment of Respondent No. 1 by the appellant.

32. Learned Lawyer appearing for the appellants has further urged that medical negligence shall be established by the complainants by producing medical documents and evidence and expert opinion. So, negligence cannot be presumed in case of medical negligence. Mere complaint without any expert opinion against any medical person relating to medical negligence cannot be accepted.
33. I fail to accept such contention of learned Advocate appearing for the appellant. I find in this case no expert was appointed and no expert opinion was called for. I think that expert opinion is not necessary in all cases where negligence and deficiency in service of a treating Doctor is established from the facts and circumstances of the case. In the present case before me negligence and deficiency in service on the part of the appellant as discussed earlier has been well established from the facts and circumstances of the case. Therefore, I have no hesitation to hold that the appellant is guilty of medical negligence and deficiency in service.
34. In Nizam Institute of Medical Sciences Vs. Prashanth S. Dhanuka reported in 2009 INDLAW SC 1047, the Hon'ble Apex Court observed that:-

“In a case involving medical negligence once the initial burden has been discharged by the complainant by making out a case of negligence on the part of the hospital or the doctor concerned, the onus then shifts on to the hospital or to the attending doctors and it is for the hospital to satisfy the Court that there was no lack of care or diligence.”

35. Thus, I am of the view that the complainants/respondents have been able to prove that there was medical negligence on the part of the appellant.
36. Under these facts and circumstances and on going through the materials available on record I am of the view that the learned District Commission properly considered the evidences, the facts and circumstances of the case and finally arrived at the conclusion and passed the impugned judgment, which, according to me, calls for no interference by this Commission, and as such, it is liable to be affirmed and the appeal is also liable to be dismissed.
37. The learned Lawyer for the appellant in support of his argument has relied on the judgment dated 06.08.2022 passed by the Hon'ble Commission in connection with the Consumer Case No. 1414/2015 and

the judgment passed by the Hon'ble Apex Court in connection with appeal (Criminal) 144-145 of 2004. However, reliance of this two judgments in the adjudication of this complaint, facts being variance, would be misplaced.

38. In the result, the impugned order and judgment dated 30.11.2022 passed by the learned District Consumer Disputes Redressal Commission, Murshidabad at Berhampore, in connection with Consumer Case No. CC/67/2015 is hereby confirmed.
39. There will be no order as to costs.
40. The appeal is, thus, disposed of, accordingly.

**[HON'BLE MR. JUSTICE MANOJIT MANDAL]
PRESIDENT**