

# SUPREME COURT OF INDIA

Anirudh Aggarwal

Vs.

Dharam Bir Bhatia

C.A.No.2770 of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

15.04.2009

## JUDGMENT

**Dr.Arijit Pasayat, J.**

1. Leave granted.
2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission (in short 'the Commission') dismissing the petition which was filed by the appellant seeking revision of the order of the State Commission, Rajasthan (in short the 'State Commission')
3. The respondent filed a claim petition before the District Consumer Protection Forum - Second, Jaipur (in short the 'District Forum') under Section 12 of Consumer Protection Act, 1986 (in short the 'Act'). It was alleged in the complaint that the present appellant started treatment of the teeth of the complainant's daughter on the basis of the recommendation made by Dr. Anjali Dave Tiwari who was respondent No.1 in the complaint petition.
4. It was alleged that that the present appellant did not complete the treatment of the teeth and in fact left the treatment midway which caused pain and agony to the daughter of the complainant.

“Both the respondents before the District Forum filed their objections. The District Forum held that the petition was not maintainable vis-a-vis the respondent No.1. However, it held that since the present appellant did not solve the problem and inconvenience suffered by the daughter of the complainant during the course of the treatment of her teeth and stopped the treatment midway on baseless and on imaginary grounds it was just and fair to award compensation to the complainant and, therefore, the appellant herein was directed to pay compensation of Rs.25,000/- and cost of Rs.3,000/- to the complainant. Both the present appellant and the complainant approached the State Commission. While the present appellant questioned the legality

of the direction for payment of compensation, the present respondent No.1-complainant sought for enhancement of the amount.

The State Commission recorded the findings that no affidavit was filed in the present case by the complainant's daughter to show as to whether she had suffered any pain and/or suffered physical hardship. It was also noted by the State Commission that in a case of this nature, since bulged and crooked teeth are put into the right position, age limitation in this regard could be an important factor. The State Commission also noted that, in the present case, the daughter of the complainant was told that considering her age the treatment could take a long time. It was found that the daughter of the complainant had not produced the basis on which it was said that she suffered intolerable pain and she brought it to the notice of the Doctor and even thereafter, the Doctor did not do anything. It was noted that in the notice produced by the complainant it had not been mentioned anywhere that braces were tied up tightly because of which his daughter suffered problem. No opinion of any expert had been produced so that it could be said that appellant showed negligence in the treatment. The Bench during the hearing of the arguments asked the complainant as to whether his daughter could be sent to some expert even then so that it could be learnt as to whether the present appellant had committed any negligence in the treatment of her teeth and that the present appellant tied up the teeth of the complainant so tightly that it made the life of complainant's daughter like a living hell. Complainant showed negative attitude in this regard and stated that the braces of his daughter have been removed and he did not want examination by any Expert.

After referring to the factual aspects the State Commission observed as follows:

"If any inconvenience is suffered in eating and drinking because of braces, negligence on the part of respondent could not be held mere on this ground. Complainant visited the respondent till nine months after fitting of the braces. In the meantime, if she had any problem, she could have discussed it with the respondent definitely."

5. In other words, it was conclusively held that there was no medical negligence involved but it was directed that the complainant should be paid Rs.14,000/- which was the amount purported to have been paid by the complainant to the Doctor for treatment. Both the complainant and the present appellant filed revision petitions before the National Commission. By the impugned order the National Commission dismissed the revision petition filed by the appellant on the ground that medical negligence was writ large and no interference was called for. It was held that there was concurrent finding that the appellant was negligent in not treating the patient who was to be treated. Revision petition filed by the complainant has been admitted and notice has been issued.

6. Learned counsel for the appellant submits that the National Commission has recorded incorrect finding that there is concurrent finding by the District Forum as well as the State Commission about the appellant being negligent and having not treated the patient.

The complainant, who appears in person, supported the order of the National Commission.

7. We are of the opinion that, prima facie, the National Commission was not justified in dismissing the revision petition filed by the appellant. Its conclusions that the forums below had recorded concurrent finding about the appellant being negligent and not treating the complainant's daughter is contrary to the conclusion recorded by the State Commission. That being so, we set aside the impugned order and direct that the revision petition of the appellant shall be heard along with the revision petition filed by the complainant which is numbered as Revision Petition No. 4294/2007. We make it clear that we have not expressed any opinion on the merits of the case.

8. The appeal is accordingly disposed of with no order as to costs.