

(2016) 03 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Case No : 2141 of 2015

DEV DUTT S/O SRI HARI SHANKAR R/O MOHALLA - SATA,	APPELLANT
Vs	
KAMLESH & ANR. W/O SRI HAKIM SINGH R/O MOHALLA SATA	RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Citation : 2016 2 CPR 306

Hon'ble Judges : J.M. Malik, Dr. S.M. Kantikar

Advocate : Nikhil Jain, Sanjay Kumar Srivastava, Astha Tyagi, Amicus Curiae

Judgement

1. Master Vikas, aged about one year, got ulcers in his mouth, in the month of January, 1999. Sh. Hakim Singh, and Smt. Kamlesh, the complainants and parents of Master Vikas, together, filed the instant complaint before the District Forum. Firstly, the complainants wanted to take their son, Vikas, to the near by Ayurvedic doctor, Sh. Ram Bharose, on 10.01.1999. When, on the way, at Bakiya Chauraha, Near Sindhi Mill Gali, Etmadpura, Dr. Dev Dutt, the OP, who was present in his clinic, met them and enquired about the child's disease. He also assured them that he would cure the ulcers in three days. The complainants were impressed upon him and started the treatment of their child from Dr. Dev Dutt, the OP. The OP examined the child and gave two injections of Grasin and B-plex. He gave a prescription on a paper. The moment, the injections were given, blood started oozing out. The OP stopped the blood by applying spirit. The OP took Rs.40/- as fee, on 10.01.1999, from the complainants and asked them to visit him on the next day.

2. On the arrival of the complainants to their house, along with their child, it transpired that the child's leg, especially, the left leg, was not moving, at all. The left leg was completely paralysed. The complainants approached the OP. The OP injected two more injections on the next day and suggested to massage on the mark of injection and took Rs.40/-, as his further fee. However, there was no improvement on the left leg. It stopped moving completely, even after massage.

The complainants visited the OP on the next day, for check-up of their child and the OP suggested to take the child to Agra, for treatment.

3. The complainants took their child on 12.01.1999, to the hospital, S.N. Medical College, Agra for check-up and admitted him in the hospital, till 19.01.1999. The child did not show any signs of improvement. The Doctor stopped them from massaging the left leg of the child. The Qualified doctors treated the child after taking enough money, but there was no improvement.

4. The complainants filed a complaint before the Sub-Divisional Magistrate, Etmadpura. The SDM directed the Elementary Wellness Centre, Etmadpura, to examine the child. He advised them to lodge a FIR against the OP. The Doctor of Elementary Wellness Centre, Etmadpura, treated the child, but again, there was no improvement. It also transpired that the OP has got no Medical Degree, nor he is authorized for medication. The complainants had to spend Rs.32,000/- for the treatment of their child and the treatment is still going and will continue in future also.

5. The defence set up by the OP is that he has never performed the work of a Doctor and did not treat the above said child or gave any prescription or injections to the child. He contended that he came to know that the complainants' child was very ill since a very long time and was treated by Dr. Ram Baroselal Vaid. Dr. Ram Baroselal Vaid gave a wrong treatment and the condition of the child became worse. He also contended that he has a dispute with Hakim Singh, the complainant No.2 and he filed a complaint against Hakim Singh in the Police Station, on 10.02.1999. Sh. Hakim Singh got annoyed and filed this false complaint against him. He contended that he works with Rahul Band Picture Gallery. Both the fora below have decided the case against the OP.

6. We have heard the counsel for the parties. The principal question which falls for consideration is, "whether, the OP is a Doctor or not?".

7. We have tried our best to find out, what is the occupation of the OP. We asked the District Forum to find out what is the occupation of OP. We directed the Registrar of District Forum-I, Agra, to make an enquiry, through its Registry, but the enquiry was made by the SHO, in favour of the OP.

8. The OP and his counsel vehemently denied this allegation. Counsel for the OP contended that prescription filed by the complainants is not on the Prescription Pad, containing the name of OP or on any Letter Head. This is a "slip" simpliciter, which can be prepared by any person. The said "slip" runs as follows :-

" Inj . - Grayein 1/2 cc/m

Rx - Beplex 1/2 cc/m

Dr. D.D. Pal

Cl.....

Tekia Chamel

Near Sindi Mill Gali

Etmadpura

10/1/99

D.D. Pal, S/o. Sri Hari Shankar

Res

Mohalla - Satta

Etmadpura".

9. Learned counsel for the OP did not dispute these signatures. No offer was made to get these signatures examined by a Hand Writing Expert. The Truth has annoying habit of being not stayed suppressed, for too long. During the pendency of this case, the complainants filed a copy of the Newspaper, where, the photograph of OP-Dev Dutt was taken and he was mentioned as

"Dr. Dev Dutt". It is also interesting to note that when the Doctor was confronted with the Newspaper, having his photograph, on the next hearing, he brought another Newspaper, which stated that his name as "Dr. Dev Dutt" was wrongly mentioned. This goes to show, how much influence, the Doctor - OP, has got with the Newspaper authorities and the Police. It is rudimentary principle of jurisprudence that documentary evidence will always get preponderance over the oral evidence because it is well known axiom of law that "men may tell lies, but the documents cannot".

10. The petitioner /OP should have produced the Newspaper Correspondent who wrongly mentioned him as Dr. Dev Dutt, in order to prove his case. The Newspaper Correspondents are very vigilant people and they hardly make such like mistakes.

11. In order to rebut the allegations of the complainants, it was open to the OP to call the following witnesses, namely, (1) Ram Bharose, (2) the then SDM, Etmadpura. Again, what is the present occupation of the OP is contradicted by so many versions. It is difficult to fathom, whether, he works with Rahul Bank Picture Gallery or works as a Property Dealer, or something else. He did not furnish the address of his work place. If he is a property dealer, he should have shown to the Court that he has sold some properties and he was cited as a witness in those cases. His story is made out of whole cloth. Merely lodging a complaint with the police, with no results, does not prove that the complainants were having malice or ill-will against him and will contest the case up to this Commission.

12. The OP has not even disclosed, what are his qualifications. He has also not disclosed, whether, he knows English language, or not. He does not have Medical Degree and accepts the same.

13. It is also interesting to note that the OP did not file the affidavit of the Owner of the Rahul Band Picture Gallery, in this context, that the OP works for them. The OP has failed to establish any relation of the complainants with Dr. Ram Baroselal Vaid.

14. In RP No. 480/2010 - Harishbhai Shamjibhai & 2 Ors. Vs. D.C. Gohil, decided on 10.12.2014, it was held, as under : " 10. Recently, the Apex Court in the case of Bhanwar Kanwar Vs. R.K. Gupta and another (2013) 4 SCC 252 has taken the view that wherein unauthorized medical treatment was administered, it amounts to unfair trade practice and administering allopathic medicine by a person who is qualified in Ayurvedic medicine, cannot be approved of the Hon''ble Apex Court on the facts of this case (supra), enhanced the compensation amount from Rs.5 lacs to Rs. 15 lacs. Another judgment of this Commission, in the case Dr. R. R. Singh vs. Pratibha P. Gamre,

Revision Petition No. 887 of 2012, decided on 14.5.2012, this Commission held the Ayurveda doctor negligent for prescribing allopathic medicines and awarded Rs. 7 lakhs, as compensation.

11. Therefore, the person who is authorized to practice under Indian Medicine Central Council Act, 1970 is not at all entitled and authorized to prescribe medicines under the Indian Medical Council Act, 1956. We are of considered view that the OP having studied one particular system of medicine, cannot possibly, claim complete knowledge about the drugs of the other system of medicine The transgression into other branches of medicine would tantamount to quackery".

15. We, therefore, dismiss the revision petition, affirm the orders passed by the fora below and restore the order of the District Forum.