

(1999) 03 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

G.MURALI

APPELLANT

Vs

MARAKKAL KALARIKKAL JANARDHANAN

RESPONDENT

Date of Decision : 05-03-1999

Acts Referred:

Citation : 1999 2 CPJ 375

Hon'ble Judges : L.Manoharan , K.M.Latha , R.Vijayakrishnan J.

Final Decision : Appeal allowed

Judgement

1. THE first opposite party in O.P. No. 314/96 of the Consumer Disputes Redressal Forum, Malappuram has come in appeal questioning the legality of the order of the Forum dated 12.2.1998. complainant in the O.P. is respondent No. 1 in the appeal and opposite party No. 2 is the second respondent.

2. COMPLAINANT's case is that opposite party No. 1 is a Dental Surgeon of the Tirur Government Hospital. He is also doing private practice at Poongottukulam at Tirur. Opposite party No. 2 is another Dental Surgeon working alongwith him. About 8 years before 1st opposite party had fixed a denture of two front teeth in the upper jaw of the complainant. One of them broke and the complainant on 30.7.1996 went to the clinic for replacing it at about 4 p.m. First opposite party was absent. The second opposite party told that he will set right the defect and took the measurements for making and fixing a new artificial tooth. Fees of Rs. 150/- was demanded. COMPLAINANT paid Rs. 50/-immediately. He was directed to come on 1.8.1996 to fix the new tooth. He went on that day and found that the new tooth differs from the old one. COMPLAINANT wanted a tooth ma thing the old one. But the first opposite party tried to fix the tooth already made in the cavity. In this process first opposite party ground the natural front teeth. On finding that the fixing was not proper, the complainant was asked to come on 5.8.1996. He went on 5.8.1996 to the Clinic. Opposite party No. 1 tried to fix the new tooth but it got entangled in the cavity. On this, opposite party No. 1 pulled it out using a sharp instrument thereby injuring his gums. He was not able either to cure or even to properly close his mouth. First opposite party advised to meet

him after 2 days. COMPLAINANT again went on 7.8.1996. First opposite party again ground the new tooth to shorten the size. Even this attempt did not give any relief. COMPLAINANT alleged that all these happened due to carelessness. At this first opposite party uttered that if he does not want tooth, take away his money and get lost. Mr. Bava attached to opposite party 1 came and pushed the complainant outside the clinic by catching at his collar. When the complainant was waiting at the Poongottukulam Bus Stop he was taken by the police on the basis of a false complaint by the first opposite party. In the police station he explained as to what happened and he was allowed to go. The complainant was later forced to approach another Dentist who was able to fix an artificial tooth exactly similar to the one made and fixed by opposite party No. 1 eight years back. Due to the deficiency in service of first opposite party the complainant had to suffer financial loss, physical pains, mental agony etc. He claimed Rs. 10,000/- as damaged by filing the complaint before the District Forum. On issuing notice both opposite parties appeared and filed separate versions. Second opposite party contended that the complainant has no consumer relationship with him and he has not received any consideration from the complainant. Nor has he done any service to the complainant and prayed for dismissal of the complaint against him.

In the version the first opposite party admitted that he had during 1986 fixed partial denture for the complainant. The complainant approached again on 30.7.1996 as one of the two artificial teeth had decayed and requested to fix a fresh tooth in its place. Measurement for the tooth was taken by the second opposite party, the junior doctor, practising under him. Thereafter the fees for fixing the teeth was charged at Rs. 150/-. The complainant paid Rs. 150/- and he was asked to come on 1.8.1996. When the new tooth was fixed it did not resemble old artificial tooth. Hence the complainant was asked to come on 5.8.1996. He again came on when some grinding was done so that the tooth may fit in comfortably. Even after this he complained that his mouth could not be closed properly and expressed discomfort. First opposite party consoled that the initial discomfort may subside in course of time and asked the complainant to come again on the 7th. According to the first opposite party there was a large queue waiting for the doctor when the complainant came on that day. The complainant attempted to jump the queue and thus created a scene. Some of the persons who got irritated at the behaviour of the complainant telephoned to the police station from a nearby shop. First opposite party also made a written complainant to the police. It is admitted by the complainant that he was taken to the police station when waiting at the bus stop. First opposite party did not pursue the complaint and the complainant herein was let off by the police after warning. It is due to this animosity that this false complaint is filed against the opposite parties.

3. THE complainant and the second opposite party filed affidavits in support of their contentions. THEy were cross examined by the Counsel of the opposite sides. During the course of the proceedings the complainant filed a petition that

he may be examined by a Medical Board. The Forum forwarded the petition to the Manjeri Government Hospital for the said purpose. Reply was received from the Hospital that there is no Dental Surgeon so as to constitute a competent Board and hence no medical examination could be arranged and the matter ended there. The first opposite party filed a petition to direct the police to forward his complaint relating to the misbehavior of the complainant herein. The District Forum did not find any relevance and hence dismissed it.

4. DR. Philip Mathew who fixed denture on the complainant later was examined as PW 1. Opposite parties were examined as OPWs 1 and 2. Exts. A1 to A8 were marked for the complainant. There was no documentary evidence for the opposite parties. The District Forum found deficiency of service on the part of the first opposite party and passed order dated 12.2.1998 directing the first opposite party to pay within two weeks Rs. 1,000/- as compensation to the complainant alongwith Rs. 500/- as costs. The second opposite party was exonerated from any liability. If the payment was not effected in time 12% interest was also granted. It is aggrieved by the above order that the appeal is filed.

5. WE call for the records of the case from the District Forum and anxiously went through the complaint, the versions, affidavits, oral evidence of the witnesses and documents. WE note that the 1st opposite party is a very experienced dental surgeon with a Post Graduate qualification. He had fixed the denture for the complainant during 1986 and the complainant was satisfied with the said service. It is only natural that when some problem arose regarding the artificial teeth fixed about 10 years back the complainant approached the same doctor. As to what happened on 5.7.1996 and 7.7.1996 there is no independent evidence. Both sides have their own case. The independent witness in this case is PW 1 Dr. Philip Mathew who fixed the artificial teeth after the complainant left the first opposite party dissatisfied with his services. He proved Exts. A1 to A3. Ext. A1 is a letter given by him referring the patient to one Dr. Manoj for his opinion. The letter is undated. Ext. A2 is by PW 1 advising-ray to be taken. This is also undated. Ext. A3 shows that Rs. 140/- is charged by Modern Dental Clinic. This also contains no date but it is seen that the patient is directed to come on 12.8.1996 at 3.30 p.m.

6. IT is seen from the deposition of PW 1 that the complainant did not show the artificial teeth fixed by the opposite parties to the witness. Nor is there anything in his evidence to show that the complainant mentioned about his having approached the opposite parties seeking their services. IT is only during his examination before the Forum that he is confronted with the denture made for him by the opposite parties. The witness says It would appear that the complainant did not want PW 1 to know that he had earlier fixed a denture from the opposite party. The reason for this cannot be guessed. If the earlier denture was not suitable or giving pain, the complainant would have mentioned this to PW 1 and would have sought his advise. This is normal human nature. In this case we can only conclude that the complainant purposely withheld the

information from PW 1. The object can only be to establish that the earlier denture was defective because of which he had to approach another dentist and at additional cost fix another denture and then alleged deficiency of service on the opposite parties. In any event there is nothing in the evidence of PW 1 to conclude that the service of the opposite party was deficient.

The complainant was cross-examined on the affidavit filed by him. He deposed that the denture made by the opposite parties could be made suitable by grinding but he did not agree to it as he feared that the evidence of deficiency in service committed by the opposite parties will be destroyed. It is pertinent to note that complainant was requested by the first opposite party to meet him on 7.8.1996. The complainant's version is that he met the first opposite party and the opposite party began to grind his live teeth which he resented. According to the first opposite party, complainant came and when he tried to break the queue the waiting patients objected which created a scene culminating in the arrest of the complainant by the police. Though there is no independent evidence as to what lead to the arrest of the complainant we are compelled to believe the version of the opposite party. From the evidence of the complainant it has come out that the defect in the artificial teeth is of a nature which could have been set right by grinding. It can only be that the complainant was not patient enough to have this done by the opposite party on 7.8.1996. In cross-examination the complainant admits that he does not know Bava who is said to have pushed him out at the direction of the first opposite party.

7. THE complainant had filed before the District Forum argument notes. THE opposite party did not file any argument notes. THERE was also no oral arguments advanced either by the Counsel or the parties. We have the opportunity of hearing detailed arguments of Counsel for both the parties. On a complete assessment of the evidence we hold that there is no deficiency in service on the part of the opposite party. We set aside the order of the District Forum and dismiss the complaint. The appeal is allowed however without any costs. Appeal allowed. _____