

(2015) 01 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Yusupova Saodat

APPELLANT

Vs

Sowjanya Kancha

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 01 NCDRC CK 0054

Hon'ble Judges : V.B.GUPTA J.

Judgement

1. IN this appeal, there is challenge to order dated 5.12.2013 passed by Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short, "State Commission") in Consumer Complaint No. 106 of 2012, vide which complaint of the Appellant/Complainant was dismissed

2. CASE of appellant is, that she was admitted as out patient on 27.10.2011 in the Hospital of Respondent/Opposite Party. The respondent had collected huge money in the name of treatment from her till 22.5.2012, by conducting various tests which were not related to the real problem. There was no relief, to the appellant on account of the medicine prescribed by the respondent. On 22.6.2012, appellant sent personal notice to the respondent stating that she was not responding to the medicines and her conditions is deteriorating day by day. Even then, there was no response from the respondent. Having waited till 21.7.2012, the appellant approached Dr. Viral Patel, Dental Hospital at Ahmedabad and there it was found that appellant was treated negligently without taking appropriate care subjecting to her wrong treatment. The act of respondent amounts to medical negligence and deficiency in service, subjecting her and her family members physically and also mentally. Accordingly, complaint was filed before the State Commission claiming compensation to the tune of Rs. 25 lacs.

3. RESPONDENT in its written statement denied the allegation made by the appellant. It is stated that appellant came to respondent's hospital on 27.10.2011 for Dental treatment. After conducting some tests, it is found that she has been suffering from Diabetes, Hypertension apart from ageing problems.

In the OPG it is revealed that many teeth were missing and she had previous dental treatment done elsewhere for most of her teeth and she was found to be chronic Periodontitis (long standing infection of Gums, Jaw Bone and Teeth etc.) When appellant came to her hospital on 10.11.2011, the respondent explained the appellant during the period of teeth implantation, the three options i.e. 1) Removable dentures (simple and cost effective)

2) Fixed dentures (slightly expensive but not possible in the present case

3) Implant supported dentures (latest and super specialized treatment but expensive)

It was so explained to her daughters as she does not know either the English, Hindi or Telugu. The appellant consented to accept for replacement of 7 Upper and 7 Lower implants amounting to Rs. 4,00,000/- . After conducting, OPG and CT scan, the scan was sent to Sweden's Noble Biocare Laboratory for implants planning situated in Mumbai and she was treated by renowned physician and dialectologist and her health improved after 4 weeks of her first check up. She paid an amount of Rs. 1,00,000/- and thereafter a sum of Rs. 2,40,000/- on different dates, in total, Rs. 3,40,000/-. She gave consent letter on 23.11.2011 and respondent started implantation purchased from NOBLE BIO CARE worth of Rs. 3,03,502/- approx. apart from clinical charges which is the world's best and reliable implant system and so also the warranty is available to the appellant. On 23.11.2011 and 04.12.2011 the implants were placed to the appellant by taking proper care and caution with the suggestions of dialectologist and senior surgeons and she remained asymptomatic and without complaints from her first treatment. During the surgery, respondent found that appellant required two more implants. Thus, respondent had purchased 16 implants instead of 14 implants with the consent of the appellant. Thus, the cost was increased from Rs. 4,00,000/- to Rs. 4,60,000/- but the appellant had paid only Rs. 3,40,000/-. After a gap of four months, when she came back for further treatment in the month of April, 2012, she did not complain any problem. On 10.04.2012, respondent had started 2nd stage of treatment and appellant attended the hospital on 24.04.2012 for surgery and 29.04.2012 for check-up and the healing caps were replaced. The appellant had attended the hospital to check up on 02.05.2012, 06.05.2012, 10.05.2012 and 11.05.2012 and did not attend later. On clinical examination slight paresthesia (numbness) on right side of lower lip was present and the amount of paresthesia was normal and the patient was promptly informed the progress.

4. ON 18.05.2012, when appellant refused to take CBCT, the respondent with own expenses had taken the same to the appellant. She missed a number of appointments as scheduled. On 04.07.2012, after going through the reports of CBCT, their advice to undergo an I -CAT Spiral CBCT was refused by her. Having satisfied she had taken treatment to her daughters also. Keeping in view the situation and on request that she wanted to continue the treatment in another hospital, the respondent had handed over the material on 13.07.2012 worth Rs.

1,32,000/- to the appellant under acknowledgement, without receiving the balance amount of Rs. 1,20,000/-. She lodged a complaint to the P.S. Narayanaguda and respondent explained all the facts with documentary evidence. She did not honour their advice and discontinued the treatment. She did not choose to refer the case to the Dental Council of A.P. to ascertain the truth. After filing of this complaint, appellant came to the hospital on 04.10.2012 stating that she will withdraw all the cases if the respondent pays the amount as demanded by her. The complaint has been filed with a malafide intention to harass the respondent, thereby to extract huge amount. There is no deficiency in service or negligence on the part of the respondent and thus prays to dismiss the complaint. The State Commission, vide impugned order dismissed the complaint being devoid of any merit.

5. BEING aggrieved, appellant has filed the present appeal.

6. I have heard the Id. counsel for the parties and gone through the record. It has been submitted by Id. counsel for the appellant, that the earlier counsel of the appellant before the State Commission, did not prosecute the case in a diligent manner. As apparent from the record, he did not cross examine the doctor nor did he prove the medical report submitted by the appellant before the State Commission. Thus, serious prejudice has been caused to the appellant, due to negligence in prosecution her case by her own counsel. It is well settled proposition of law that parties should not be made to suffer due to negligence on the part of their counsel. Moreover, appellant has also filed a complaint against her counsel before the Bar Council of Andhra Pradesh.

7. ON the other hand, it has been submitted by Id. counsel for the respondent, that appellant has not examined her doctor who had given the report before the State Commission and for negligence on the part of the appellant, respondents cannot be made to suffer. There is no illegality or infirmity in the impugned order passed. Hence, there is no merit in this appeal.

8. STATE Commission in its impugned order has observed; "The literature submitted by opposite party also goes to show that Noble replace is the world's most used implant system and that there is also warranty for replacement of such implants which is beneficial for the complainant. The complainant did not avail the said warranty and the complainant did not prove otherwise in the said context.

The complainant did not submit any other literature contra to it but mostly relies upon Ex. A -16 report of the Dr. Viral Patel of Ahmedabad, wherein, it is mentioned that eight implants in Maxilla and eight implants in Mandible were placed by another Dentist (OP herein) at Hyderabad nine months back to the complainant and that all the implants were covered by healing abutments and that fourteen units PFM single piece prosthesis for upper and 14 unit single piece prosthesis for lower was with the patient on cast models with abutments on the casts (MO.1) and that the patient was having complain of paresthesia in right

Mandibular chin region and that on X -rays examination and CT scan reading it is found that two implants on mandibular right posterior region were in the mandibular canal Impinging the inferior alveolar nerve and thus causing paresthesia in metal region on right lower side and that placement and try in of the prepared prosthesis were done but the prostheses was not acceptable by the patient as it was not proper. The concerned doctor who said to have issued original of Ex. B16 report did not file his affidavit evidence in support of the complainant that the OP doctor treated the complainant negligently and that in a negligent manner damaged the nerves of the complainant and that it was a wrong treatment. Had the said medical practitioner filed medical evidence there was a chance for the OP to cross examine him with reference to the said literature and other accepts to disprove the contention of the complainant but since he did not file such affidavit evidence there was no chance for him to cross examine him and impeach the credit of the said Ex. B16 and also the contention of the complainant and as such no importance need to be given for such a report to conclude that opposite party rendered deficient service to the complainant. Had the said Dr. Viral Patel of Ahmedabad was produced by the complainant certainly OP doctor would have questioned him as to how the prosthesis was not acceptable by the patient so also how it was not proper." 12. It is an admitted fact, that appellant had undergone treatment in the hospital of respondent and had paid a substantial amount of Rs. 3,40,000/ - to the respondent. Even after spending substantial amount on the treatment, the appellant was not responding to the medicines given by the respondent. After not getting positive response from the respondent, she finally shifted to Dr. Viral Patel, Dental Hospital at Ahmedabad.

9. IT is also the admitted case of the parties, that appellant had placed on record report of Dr. Viral Patel, before the fora below which is A -16. However, this report was not proved in accordance with law, since Dr. Viral Patel who had given this report, did not file his affidavit of evidence before the State Commission. Therefore, the State Commission non -suited the appellant, mainly on this account.

10. IT is well settled that a litigant cannot be made to suffer for an act of negligence committed by its counsel. The appellant has already initiated proceeding against her counsel before the Bar Council. Since, report A -16 is already on record of the State Commission, as such no prejudice is going to be caused to either of the parties, if the appellant is given permission to file the affidavit of evidence of Dr. Viral Patel alone. The respondent can cross examine this witness and can also produce evidence to rebut report A -16. Accordingly, present appeal is allowed and the matter is remanded back to the State Commission only on this short ground, that it will give liberty to the appellant to file affidavit by way of evidence of Dr. Viral Patel. Respondent will be at liberty to cross -examine this doctor. Further, respondent can produce further evidence if any, to rebut the evidence of Dr. Viral Patel. With these observations, present appeal stand disposed of.

11. THE State Commission shall make an endeavor to decide the complaint preferably within one year, from the receipt of this order.

12. PARTIES are directed to appear before the State Commission on 2.3.2015.
Dasti to both the parties.