

Heading1
Heading2

Complaint Case No. CC/10/2018
(Date of Filing : 12 Jan 2018)

1. MOHINDER SINGH

WZ-11D, STREET NO. 18/22, SANT GARH, TILAK
NAGAR, NEW DELHI-110018.

.....Complainant(s)

Versus

1. THE DELHI DENTAL & MEDICAL CENTRE

19/32 (BESEMENT) OLD RAJENDER NAGAR, NEW
DELHI-60.

.....Opp.Party(s)

BEFORE:

HON'BLE MR. INDER JEET SINGH PRESIDENT
HON'BLE MRS. SHAHINA MEMBER

PRESENT:

Dated : 13 Dec 2023

Final Order / Judgement

Before the District Consumer Dispute Redressal Commission [Central District] - VIII, 5th
Floor Maharana Pratap ISBT Building, Kashmere Gate, Delhi

Complaint Case No. 10/12.01.2018

Mohinder Singh s/o Late Sh. Kirpal Singh

R/o WZ-11D, Street No. 18/22, Sant Garh,

Tilak Nagar, New Delhi-110018

...Complainant

Versus

The Delhi Dental & Medical Centre

Through its Managing Director

At 19/32 (Basement), Old Rajinder Nagar,

New Delhi-110060

...Opposite Party

Senior Citizen's case

Date of filing: 12.01.2018

Date of Order: 13.12.2023

Coram:

Shri Inder Jeet Singh, President

Ms. Shahina, Member -Female

ORDER

Inder Jeet Singh , President

1.1. (Introduction to case of parties) – The complainant has grievances against OP that there is manufacturing defect in the denture provided and of unfair trade practice during putting denture to complainant pursuant to directions by ECHS Polyclinic Delhi, Cantonment, since OP had also charged Rs.10,000/- for such denture. The denture put was not suitable and also it was not functioning properly, which caused various problems, hardship besides it was not comfortable as it caused scratching, wounds, pains, etc vis-à-vis it was not corrected despite various visits to OP. The complainant was constrained to get new denture from another clinic Ashok Dental Clinic, Ashok Nagar, Delhi, by spending extra amount of Rs. 15,000/-. That is why, the complaint was filed for refund of Rs. 10,000/-, cost of new denture of Rs. 15,000/-, damages of Rs.10,000/- per month from January 2017 to November 2017 (which comes to Rs. 1,10,000/-), fro and to fares charges of Rs. 8,000/- from resident of complainant to the hospital, legal notice charges of Rs. 11,000/-, refund of that amount claimed by OP from ECHS, since complainant is member/beneficiary of ECHS, besides appropriate relief.

1.2. The OP has opposed the entire complaint that neither there is any unfair trade practice nor there was any extra charges done but the denture was opted and by the complainant that too after furnishing consent thereof. The denture adjusts with the passage of time and during several visits, which is a proved medical practice duly supported by appropriate literature. The problem ensued during that adjustment of denture was taken care of in those visits, which is a normal and routine course. The complainant was given the best attention and services, since the OP has qualified BDS with rich experience of about 20 years in dentistry; neither there was any defect in the denture nor negligence on the part of OP vis-à-vis it was complainant who left the treatment in between and went to another doctor.

2.1. (Case of complainant) –The complainant is an ex-serviceman (Junior Warrant Officer of IAF). He is a member of ECHS (ex-serviceman contributory health services scheme), he got removed his all teeth's and gums in ECHS polyclinic, Delhi Cantt. On 01.12.2016, he was referred to OP for necessary denture.

2.2. On 02.012.2016 the complainant approached OP. The complainant was put through the process for the denture and he was asked to attend on 06.12.2016 for further process. The complainant was given two options, viz (a) have a normal denture as recommended by ECHS or (b) to pay an extra amount of Rs. 10,000/- for another denture shown to the complainant at that moment. The complainant accepted the second advice, as it was more attractive, well shaped, better in quality and strength. He paid Rs. 10,000/- in two installments of Rs. 5,000/- by way of cheque no. 6101 dated 12.12.2016 and further amount of Rs. 5,000/- by way of cheque no. 6102 dated 19.12.2016 both drawn on Punjab and Sind Bank, Purana Quila Road, New Delhi. The complainant remained under the process for a period of two months and trial with the new denture was carried for its suitability and proper functioning. Whereas, the denture caused him

various hardship and problem, as it could not make comfortable home at its place, it had caused scratches, wounds, pains, thus chewing food or any other item became out of question. The complainant was regularly complaining to the doctors but their answer was that new denture even takes more than six months till the complainant will become accustomed to it. Moreover, the complainant also requested the attending doctor to check whether or not the denture is of normal in height but the complainant was advised that doctor is the best judge and there is no fault in the denture, besides the complainant is having the first denture and the complainant to get into its habit takes time.

2.3. The complainant took advice of other doctor and he was told that height of the denture is more. It was also advised by one of the doctors that problem will persist till the denture is not changed. The complainant requested the OP for change but they refused, except that height of the denture is more. The complainant understands now that OP was aware of the existing problem of the complainant as the attending doctor measure the height of the denture with the foot scale from chin to nose every time, since he complained to OP of the chewing problem and its other effects.

On 01.12.2017, the complainant was asked by the OP to follow the schedule and by observing that schedule of putting or putting off the denture, the problem will vanish (para-9 of the complaint describes those time schedule and internals to be followed for use of denture). Whereas, the complainant had taken the burn of various pains with the hope that following the advices prescribed shall bring comfort to him but it did not happen; the complainant became a victim of circumstances at the hands of OP, she was not able to even take proper food and denture was causing all such un-comfort.

2.4. Thus, the complainant was constrained to approach again dental surgeon namely Dr. (Maj) Varun Nischal (Retd.), who had referred the complainant to OP. The complainant explained all his pains, sufferings and difficulties. He addressed to attending Dr. Ayush Khatri of OP to consider the sufferings of complainant, however, in spite of all this, the attending doctor maintained that denture is perfect and needs no change.

Since, the complainant was put into pains, difficulties, physical and mental torture till September, 2017, when the complainant was left with no other choice then opt for a new denture to overcome from all these difficulties and pains; he was compelled by circumstances to go for a new denture.

2.5 The complainant was cheated by the OP for luring the complainant and extorting an extra amount of Rs. 10,000/- as well as the OP failed to adhere to fair trade practice. The complainant also cautioned the OP by legal notice dated 16.10.2017 and also proposed to settle the matter, however, the OP gave a vague reply to such notice.

2.6 The OP failed to take into consideration of the manufacturing defect and complainant's various requests, the OP has shown its irresponsibility in dealing with the matter and deprive the complainant of the comforts of new denture, which amounts to deficiency of services. The complainant is also mentally disturbed due to conduct of the OP, who failed to show any humanitarian approach to the problem and pain of the complainant, more especially being a person for a noble profession, therefore, complainant is not only aggrieved but hurt badly. That is why the complainant came with the complaint against the OP since it had acted, arbitrarily, illegally and in a casual manner and ruined the hopes of complainant besides he was given a

defective denture intentionally or deliberately. That is why the complaint for the reliefs claimed.

2.7 The complaint is accompanied with copy of treatment and attendance from 02.12.2016 to 06.01.2017, DO letter by Dr. (Maj.) Varun Nischal (Rtd.), slip no. 16399 dated 11.09.2017 by Ashok Dental Hospital with receipt of charges, legal notice dated 16.10.2017, OP's reply dated 01.11.2017, communication dated 30.11.2017 by Director Regional Centre, ECHS..

3.1 (Case of OP)-The OP filed detailed written statement through its Director Dr. Sumit Bajaj and opposed the complaint by way of preliminary objections and reply on merits, but both of them are overlapping vis-à-vis it is also narrated as to what process was followed to make a denture.

3.2. The denture is a removal appliance. When denture is made, the impression of stationery mouth/jaw is taken. When patient starts biting, there is bound to have difficulty in adjustment of denture, while speaking or eating. It is a universal process and it needs repeated seating, trimming and adjustments. Moreover, denture fitting varies from patient to patient depending upon his tissue condition, dietary habits and acceptability of treatment. In many patients, it takes two to eight weeks for a denture to adjust and in others it takes six months for the patient to completely get used to it. Moreover, even best of the dentures do not guarantee, it will serve all the expectations of the patient. Moreover, 6-7 sitting are required to fabricate a denture and one needs time to adjust, which may vary two to eight weeks. In the present case, the complainant had visited six times for fabrication and twice for adjustment.

3.3. The OP denies all the allegations of the complaint by explaining that it is normal protocol to measure the height of the face to fabricate the denture and the certificate of Maj. Varun Nischal, being relied upon by the complainant is undated, it is false and fabricated. The complaint is contradictory as he complains of TMJ pain, it means (he kept using the denture for long time) and of having ulcers and scratches in the mouth (then he cannot have TMJ pain), therefore, the complaint is mala-fide. The complainant was made aware of problem to be faced during uses of denture and he had given his consent (which has been reproduced in para-7 of preliminary objection para-5 of reply on merits). The complainant never informed the OP that he has changed the doctor, which is in fact inappropriate for the complainant as he was required to continue the treatment with the OP because of fiduciary relationship between a doctor and a patient.

3.4. It was the complainant himself who asked the OP about other option for denture available at the clinic, since he had history of two sets of dentures made privately (non-ECHS) and then he was shown the options which may be opted. He had selected the option. The complainant admits in his complaint that he had visited for eight seating in a period of one month (and not for two months as alleged), out of which five seating were for fabricating of the denture and two seating to adjust, one last seating for adjusting the lower denture since upper jaw was proper. During that period, the complainant had complained of ulceration, it was rectified. The OP also denies the other allegations of complains or hardship, since it is a known fact that denture initially causes small cuts or ulceration but there are never scratches. The complainant was required to stop using the denture so that ulcer may heal. There was no manufacturing defect of any kind in the denture. The complainant was given the best treatment and opposite party has qualified BDS and has rich experience of almost 20 years in dentistry. The OP is NABH accredited and

diligently follows all policies, all procedures and standard prescribed by Quality Council of India.

3.5 Since there was no negligence of any kind by or employees of OP, the complaint reported by the complainant was attended immediately, despite it the complainant had given legal notice and the same was properly replied but it was complainant, who was rude and arrogant with the employees of OP by threatening that he belongs to family of lawyers. There was no harassment or mental agony suffered by the complainant and the complainant never came back after 01.02.2017. The complaint was file to extort money. It is without cause of action. The complaint is liable to be dismissed. The reply is annexed with medical literature, consent form, literature on practice prosthetics

4.1 (Replication of complainant) –The complainant filed detailed replication to response the allegations of reply, the complainant reaffirms the complaint as correct. The complainant explains that neither there is any contradictory version in the complaint nor the certificate issued by Maj. Varun Nischal is false nor the legal notice was issued wrongly nor the complaint was filed to extort money but on the factual position and grievances. Although, there is a clerical mistake that word “implant” was mentioned in place of word “denture” but it would not give any benefit to the OP being emphasised in the reply.

4.2. The replication was also supported by additional record of communication dated 28.10.2017, 22.11.2017, 10.05.2018 by Director Regional Centre, ECHS and surgery record provided by ECHS, Delhi Cantt.

5.1. (Evidence)- In order to establish the complaint, the complainant led evidence, by detailed affidavit with the support of all documentary record filed with the complaint.

5.2. The OP led evidence of its Director Dr. Sumit Bajaj and also affidavit of Dr. Rahul Vohra, Prosthodontist, BDS and MDS to establish its plea with the support of document filed with the reply.

6.1 (Final hearing)-The complainant and the OP have filed their respective written arguments followed by oral submissions by Sh. H. S. Sasan, Advocate for complainant and Ms. Mansi Bajaj along with Ms. Tanushree Chakarwanti, Advocate for OP.

6.2. The OP has relies upon certain cases to fortify its stand of no medical negligence. But complainant has reservations that the facts mentioned in complaint are themselves crystal clear, especially the pains, ulceration, etc happened to the complainant after putting on the denture, therefore, the case law being relied upon by the OP would not help the OP.

7.1 (Findings)- The rival contentions are considered, keeping in view the material on record, the statutory provisions of law and the case law presented.

7.2. There are certain undisputed facts that the complainant was advised medically to go for denture to OP, he visited the OP at its clinic. The complainant was put to impressions for preparing denture and then denture was prepared. However, the dispute is whether or not the complainant was charged extra for such denture selected by the complainant? The other disputes are whether the denture was perfect for the complainant or was there any manufacturing defect besides allied services rendered?

7.3.1. Before analyzing the aforementioned issues, some other allegations and counter allegations are to be determined. One of them is in respect of letter (Annexure-B/page 13 of the complainant's paper book). According to OP, this letter is false and fabricated as it is undated but according to complainant this letter was issued by Dr. Maj. Varun Nischal (Retd.) under his seal and signature.

It needs to look at the record. The Annexure-B page-13 is the letter, which is addressed to Dr. Ayush of OP and the contents of letter reveals that patient-complainant is not at all comfortable with U/L complete denture dispensed by OP, there is complaint of pain, Rt & Lt TMJ and headache with request to resolve the issue. It is fact that the letter does not bear any date. However, there is another fact that there was oral communication with Dr. Ayush of OP, when he was requested to look into the matter, which is an undisputed fact by the OP. Therefore, just the letter was not bearing date, it does not mean that the letter is false and fabricated. Moreover, the OP has also filed record of consent form and this consent form does not bear signature of the patient nor its ID number, does it mean that the consent form is fabricated for want of bearing the date?. Both the parties are to be treated at parity and it is not fair on the part of OP to classify the letter of Dr. Maj. Varun Nischal (Retd.) as false and fabricated just because it is not bearing the date. This contention raised is determined against the OP.

7.3.1. There is another plea of OP that complainant had history of two previous denture, which was denied by the complainant vis a vis it was a first denture. There is no medical proof by the OP that complainant had previous history of two dentures. If that so, the plea of OP does not sustain that first denture causes usual scratches or pains till it adjusts or rests. This contention is also disposed off.

7.4. As per the evidence of the parties, it is also the case of complainant that he had selected the denture, other than the denture in the list prescribed by the ECHS. The complainant had also compared dentures and then he had selected it. Simultaneously, it is also undisputed fact that complainant had paid an amount of Rs. 10,000/- towards that selected denture. However, the denture was defective.

But according to OP, there was no defect in the denture but it was taking routine time for adjustment to the complainant. There were no extra charges taken from the complainant but as per norms.

However, the complainant has proved Reminder-I/ letter dated 22.11.2017 written by ECHS to the OP that as per MoA, para-13, any default or negligence in the provision or performance of medical services shall be the exclusive responsibility of OP. Therefore, even if the complainant had selected the denture and also paid the amount, the off shoot to be determined is whether or not there was any defect in the denture.

7.5.1. The OP contends that each patient is unique in itself and denture takes time to rest properly, however, the complainant left in between and approached the other doctor, which was

not fair. Whereas, the complainant has other reservations that he was frequently visiting the OP, he faced all traumas but the problem was not solved despite various visits. He had also approached the ECHS, even the OP was also advised to resolve the issue but it was not done. The complainant was constrained to approach new doctor and on advises new denture was put, which was working properly. He was constrained by the circumstances to go the other doctor.

By looking at the record, the circumstances are speaking themselves. The OP had taken the issue that complainant could not go to other doctor or it was not fair on the part of complainant, however, this plea is not acceptable as the complainant had right to get appropriate medical treatment from the other doctors also, that too when he has exhausted the visits at the clinic of OP. To that extent, there is no weight in the submission of OP.

The complainant has proved record that he availed services of Ashok Dental Hospital and also took new denture by paying an amount of Rs. 15,000/-, its receipt has also been proved by the complainant. The new denture is functioning properly and comfortably.

Since the each patient is a unique patient, because of physical features for the purposes of denture as well as the denture are tailor made. The patient is to be made accustomed to such denture. The evidence on record further infers that at the new clinic, the complainant was put to use a new denture and the existing denture was not adopted to be continued for the complainant. To say, the complainant was prescribed new denture, since the previous denture was not making home or comfortable rest in the mouth of complainant. It is not a case to be construed that there was no laboratory test for the denture, since the denture was as per the requirement of individual patient/complainant that too after impressions from the mouth/jaw of complainant. Therefore, the evidence on record establishes that the denture prepared at the clinic of OP was not suitable for the complainant nor it was fit to his requirement, it was causing troubles to complainants, it cannot be used by him being defective for him and under these circumstances the complainant had to take the services of new clinic and the new denture was provided for amount of Rs. 15,000/-. Lastly, the complainant had also visited OPD of ECHS after denture of OP with those complaints, the OPD cards have been proved to this effect. The visit to New clinic for denture was much after in September 2017.

7.5.2 Had the denture provided by OP been fit and properly functioning to the complainant, the complainant would not have to go for new denture and to spend Rs. 15,000/-. This entitles the complainant for refund of Rs. 10,000/- charged for the denture since it has been proved defective for the complainant. The complainant had selected the denture to meet the requirement but it ought to have been functional. The OP is liable to return the amount of Rs. 10,000/-.

Had the denture been without defects, his expenses would have been Rs.10,000/- for that denture and the complainant need not to go for another/new denture from new clinic. Thus, complainant cannot be put to suffer more amount but he spent amount of Rs.;15,000/- for new denture. In order keep the complainant's within that limit of that costs of Rs.10,000/-; , the OP is also liable to pay Rs.5,000/-, which complainant spent while availing services for new denture by spending amount of Rs.15,000/-. In this way, complainant's case will remain of spending maximum amount of Rs.10,000/- for a denture of his choice.

7.6. The complainant also claims legal notice charges of Rs. 11,000/- as the notice was sent prior to filing the complaint as an option to settle the issue, besides costs of Rs. 22,000/- however, the OP had declined the allegations in its reply and also opposed the claims of complainant.

Considering the nature of dispute as well as prove of other circumstances, a sum of Rs. 5,000/- is allowed on account of cost of litigation etc. in favour of complainant and against the OP.

7.7 The complainant has also claimed an amount of Rs. 8,000/- for fare expenses from his residence to the clinic of OP and vice-versa. As appearing that it takes routine visits and adjustments for the denture, therefore, being a part of that treatment, the request for fare charges of Rs. 8000/- is declined to the complainant.

7.8. The complainant also seeks refund of amount claimed by OP from ECHS, however, there is no proof of this fact by the complainant as to what amount was claimed by the OP from the ECHS vis-à-vis it is inter-se between the OP and ECHS. Therefore, this request of complainant is also declined as additional amount charged of Rs. 10,000/- has been directed for its refund in terms of paragraph 7.5.2 above.

7.9 The OP relies upon case law (on the point of negligence) - (i) Kusum Sharma & Ors Vs. Batra Hospital & Med. Research; civil appeal no. 1385 dod 10.02.2010, (ii) Bolam Vs. Friern Hospital Management Committee (1957) 1 WLR 582: (1957) 2 All ER 118 (iii) Maynard Vs. West Midlands Regional Health Authority the words of Lord President (Clyde) in Hunter Vs. Hanley 1955 SLT 213, (iv) Achutrao Haribhau Khodwa & Others Vs. State of Maharashtra & Others (1996) 2 SCC 634 and (v) Dr. R. K. Sharma & Smt. Murttiyavs Smt. Murttiya Devi & Dr. R. K. in RP No. 1262 of 2009 dod 15.10.2014., however, the same is on the point of medical negligence, whereas, the present case, as established is pertaining to defect in the denture and allied services, therefore, the case law relied upon by the OP are not applicable to the situation in hand.

7.10 In view of the above, the complaint is allowed in favour of complainant and against the OP while directing the OP to pay a sum of Rs. 15,000/- (i.e. Rs. 10,000+ Rs. 5,000/-) besides litigation cost etc. of Rs. 5,000/-. The amount will be payable within 30 days from date of receipt of this order, failing to return the amount within that period, the OP will be liable to pay interest at the rate of 6% pa on the amount of Rs. 15,000/-, from the date of complaint till realization of the amount.

8. Announced on this 13th December 2023 [अग्रहायण 22, साका 1945].

9. Copy of this Order be sent/provided forthwith to the parties free of cost as per rules for compliances and its copy be also uploaded on website of this Commission forthwith.

[Inder Jeet Singh]

President

[Shahina]

Member

(Female)

**[HON'BLE MR. INDER JEET SINGH]
PRESIDENT**

**[HON'BLE MRS. SHAHINA]
MEMBER**