(1997) 01 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

AIRPORT AUTHORITY OF INDIA — APPELLANT

Vs

ARUN KUMAR GUMBAR — RESPONDENT

Date of Decision : 20-01-1997

Acts Referred:

Citation : 1997 1 CPJ 247

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Appeal 200/95 allowed

Judgement

1. BOTH the appeals mentioned in the above title are directed against the order of the District Forum- II dated 22.3.95. Briefly stated, the material facts are that the complainant Mr. Arun Kumar Gumbar, Director of M/s. Aakriti Plastics Products Private Limited, New Delhi went to Indira Gandhi International Airport to see off his brother on 5.8.93. He parked his Maruti AC Car No. DNH-2037 in the authorised parking area for which the employee of M/s. Mahesh Enterprises, who manages the parking issued receipt No. 465459 after charging Rs. 5/-. When the complainant returned after seeing off his brother, he found the car missing. He lodged a report being F.I.R. No. 335 at P.S. Indira Gandhi International Airport. A message was flashed to all S.Ps through out the country by the police. Inspite of efforts, the car could not be traced. Unfortunately, the car was not covered by insurance at the time of its loss. The complainant i.e. Mr. Arun Kumar Gumbar and aforesaid Company filed a complaint impleading Indira Gandhi International Airport Authority of India, hereinafter referred to as the Airport Authority, as Opposite Party I and Mahesh Enterprises as Opposite Party II, claiming Rs. 1,95,852.11 being the price of a new Maruti AC Car, besides Rs. 40,000/- on account of compensation for the loss suffered by the complainant and the expenditure incurred for availing for other mode of transport in addition to Rs. 10,000/- for mental agony suffered by complainant-I. The complainant also claimed interest @ 24% on the amount of compensation claimed by him.

2. OPPOSITE Party II Mahesh Enterprises failed to appear or file a reply, the complaint was, however, contested by OPPOSITE Party I, International Airport

Authority of India. In the written statement filed by OPPOSITE Party 1, it was stated that the complainant did not hire the services of the contesting respondent and at no stage was there a privity of contract between the complainant and the said respondent. It was further pleaded that the Airport Authority had entered into an Agreement with Mahesh Enterprises vide Licence Agreement dated 14.10.92 and under the terms of the said licence, the Airport Authority was not responsible for deficiency in service or negligence on the part of the said licencee. It was further pointed out that the parking charges were collected by the said licencee and responsibility for the loss, if any, was that of the said respondent. A copy of the agreement entered into between the Airport Authority and the said licencee was filed with the written statement. On behalf of the complainant, Mr. Arun Kumar Gumbar filed his affidavit as well as the token issued by the employee of respondent No. II regarding the parking of the car, invoice whereby the car was purchased from M/s. Aganall Traders Limited on 14.9.89 for Rs. 1,36,695/-, copy of the registration book and price of new Maruti AC car as on 17.9.93 being Rs. 1,95,858.11. On behalf of the contesting respondent, affidavit of Ms. Suman Jain, Manager Law, of the International Airport Authority of India was filed.

The District Forum-II held, (i) that Opposite Party I, Airport Authority was as much responsible for taking care of the vehicle entrusted to its licensee as the licensee himself, (ii) That it would be fair and reasonable in the facts and circumstances of the case of fix the price of the vehicle as Rs. 1,35,972/-; (iii) That no evidence having been led, the complainants were not entitled to compensation on account of expenditure made on alternative transport. Rs. 5,000/- was allowed on account of mental agony. Both the parties were jointly and severally directed to pay the aforesaid amount within 30 days failing which the amount was to carry 24% per annum interest till the date of payment.

3. AGGRIEVED by the order, both the opposite parties have preferred these separate appeals. We have heard Mr. Y.K. Kapoor, Advocate for the Airport Authority, Mr. Bipin K. Dwivedi, Advocate for Mahesh Enterprises and Mr. Rajeev Mehra, Advocate for the complainant and have perused the records. The contentions of Mr. Kapoor learned Counsel for the Airport Authority are, (a) that the entire management of the parking had been handed over to the licensee under the written agreement and no part of the management was retained by the Airport Authority, (b) That there was no privity of contract between the Airport Authority and the complainant, (c) Assuming for the sake of argument that there was privity of the contract, under the Licence Agreement, the contractor had taken over the liability to the exclusion of the Airport Authority. Mr. Kapoor further submitted that even if the Airport Authority were held liable to make good the loss, it shall have a right to recover the amount from the contractor under the terms of the inter-se Agreement with the contractor. This would lead to multiplicity of proceedings, which is against public policy. He also submitted that in any case the amount of compensation awarded by the District Forum was not based on any evidence on record in so far as market value of the

car on the date of the loss was concerned. In this connection Mr. Kapoor pointed out, (i) that the car was not shown to be AC Car, (ii) admittedly it was purchased on 14.9.89 and had been used for almost four years at the time of loss, (iii) the value fixed for the last insurance ending for the period 30th August, 1992 was Rs. 1,35,972/- and depreciation in value had, not been taken note of while fixing the market value of the vehicle on 5.8.93, almost one year after the expiry of insured value of the car. The contention of Mr. Dwivedi, learned Counsel for M/s. Mahesh Enterprises, is that the present case is covered by two decisions of the National Commission and the facts alleged by the complainant did not constitute bailment and the contractor was not labile to indemnify the complainant. The decisions relied on by Mr. Bipin K. Dwivedi are, (1) Commissioner of Corporation, Madras v. S. Alagaraj and Another, I (1996) CPJ 54 (NC) and (2) Rohini Group of Theatres v. V. Gopalkrishnan II (1996) CPJ 1 (NC). Mr. Dwivedi adopted the arguments of Mr. Kapoor, in sofar as market price of the car in question at the time of loss, is concerned.

4. MR. Rajeev Mehra, learned Counsel for the complainant has contended, (a) that the authorities relied on by MR. Dwivedi are clearly distinguishable and do not apply to the facts of the present case, (b) the facts of the case in hand clearly amounted to bailment. He has placed reliance on a decision of the Delhi High Court in The New India Ansurance Co. Ltd. v. D.D.A., AIR 1991 Delhi 298, (c) assuming that the facts did not constitute bailment, admittedly there was a contract of service for consideration and failure to perform the contract by the promisor, namely, M/s. Mahesh Enterprises constituted deficiency in service and the complainant was entitled to recover compensation, (d) it would lead to an impossible situation if it were held that a person who had parked his vehicle at a regular parking area on payment of the prescribed charges had no remedy against the person managing that parking lot, for the loss of his vehicle, (e) MR. Mehra relied on an earlier decision of this Commission in Devendra Verma v. G.M. Northern Railway and Others, 1994 (2) CPR 599 in which compensation was awarded for the loss of a car from the authroised car parking centre at Delhi Railway Station. We have given thoughtful consideration to the respective submissions of the learned Counsel for the parties. There can be no dispute that it would depend on the facts of each individual case whether the same constitute bailment. In The New India Assurance Co. Ltd. v. D.D.A., AIR 1991 Delhi 298, it was held that essence of bailment was possession. In the facts of that case possession of the truck was handed over to the defendant by parking the same in the parking centre established under Delhi Development Act and the defendant had issued a receipt for safe keeping of the vehicle for a period of 24 hours. It was held to be a case of bailment and the defendant having failed to offer the vehicle back to the owner and also having failed to show that he exercised reasonable care as a man of ordinary prudence for the safety of the vehicle, he was held liable for its loss. In coming to this decision. the learned Judge relied on two decisions of the Supreme Court referred to therein. The decisions are, (1) State of Gujarat v. Memon Mohamad Haji, AIR 1967 SC 1885, and (2) N.R.

Srinivasa Aiyar v. New India Assurance Co. Ltd., AIR 1983 SC 899.

5. FOR the present purposes, it is sufficient to observe that the facts constitute bailment and the person responsible for the management of the parking area is liable to make good the loss. The decisions relied on by Mr. Dwivedi are not applicable to the facts of the present case. As stated earlier, the question of bailment is required to be decided in each case arising for consideration. We do not find any proposition of general and universal application laid down in the aforesaid decisions to warrant the conclusion that parking of the car in such circumstances on payment of prescribed consideration cannot amount to bailment. We further find merit in the contention of Mr. Mehra that even if it is assumed that there was no bailment, the contractor cannot avoid liability because of the breach of contract of service entered into with the complainant. It is not disputed that the contractor issued a token as receipt for parking of the car. It is further not disputed that he had charged the prescribed fee of Rs. 5/-. In the printed token, the following words appear: "No responsibility of items such as radio, stereo, watch , stepney, etc."

By necessary implication the contractor assumed responsibility for safety of the vehicle as distinguished from the aforesaid accessories. A reading of the Licence Agreement dated 14.10.92 entered into between the Airport Authority and the Licensee, M/s. Mahesh enterprises shows that for running the parking area, the licence fee payable by the licensee was of a sizeable amount of Rs. 2,30,000/- per month for the first year and Rs. 2,53,000/- per month for the second year. This gives a fairly good idea of the number of vehicles parked and collection of parking fee from each vehicle. In other words, it cannot be said that the fee being charged was a nominal one.

6. WE also find force in contention of Mr. Mehra that unless the contractor were held responsible for loss of the vehicle owing to his negligence, or failure to take reasonable care as a man of ordinary prudence, it would lead to an impossible situation. Need for the safe parking area can never be over-emphasized. If the persons responsible for running authorised parking areas are not held responsible, one wonders how can life go on in bigger cities and Metropolitan areas. Use of the vehicle has become a necessary part of every day life and consequently there is corresponding need for their safe keeping during the temporary absence of the user of the vehicle. The earlier decision of this Commission in Devender Verma supra undoubtedly supports the contention of Mr. Mehra. This brings us to the next important question whether the Airport Authority was liable alongwith or without the licensee, namely, M/s, Mahesh Enterprises Clause 9 of the Licence Agreement reads as follows: "The Licensee, shall take all necessary precautions for the safety of the vehicles. Any claims arising out of neglect of the licensee shall be their responsibility." The entire management of running the parking area has been handed over under the Agreement by the Airport Authority to the Licensee on the terms and conditions appearing in the Agreement. The licensee had assumed responsibility for the

safety of the vehicles which were parked on payment of prescribed charges. Even if the Airport Authority is made to satisfy the claims, they would be entitled to recover the same from the licensee by virtue of Clause 9 of the Licence Agreement, reproduced as above. This would lead to multiplicity of proceedings which is against public policy. We are, therefore, of the view that the Airport Authority was not liable to satisfy the claim. Finding to the contrary in the impugned order is, therefore, set aside.

The next important question is regarding the amount. The copy of the invoice dated 14.9.89 shows that it was a Delux Car which was purchased by the complainant. This is clear from the fact that the price was stated in front of the column Maruti 800-D1 Car. The car was admittedly not insured during the period it was stolen. In the last insurance ending on 30th August, 1992 the car was insured for Rs. 1,35,972/-. The car was lost after a period of almost one year from 30.8.92 namely on 5.8.93. The District Forum failed to make any deduction on account of depreciation for the period of one year. In our view, it would be reasonable to make decuction of 10% on account of use of the car for almost one more year since the expiry of the last insurance. The market price of the car thus works-out to Rs. 1,22,375/-. This is in addition to Rs. 5,000 /- allowed by the District Forum on account of mental agony.

7. FOR the foregoing reasons. Appeal No. A-200/95, Airport Authority of India v. Arun Kumar Gumbar and Others, is allowed and the order of District FORum against the said Authority is set aside. As a result, the complaint filed against Airport Authority stands dismissed. The other Appeal No. A-622/95, M/s. Mahesh Enterprises v. Arun Kumar Gumbar and Others, is dismissed except to the limited extent i.e., the amount payable by the said appellant is reduced to Rs. 1,22,375/- and Rs. 5,000/- on account of mental agony. The further directions of the District FORum to pay interest @ 24% in the event of default in payment of the amount within one month, is set aside. The amount of compensation allowed by this order shall carry simple interest @ 18% per annum, from 5.8.93 till the date of actual payment. There shall be no order as to the cost in the Appeal. A copy of this Order be conveyed to the parties as well as District FORum-II. Appeal 200/95 allowed. Appeal 622/95 dismissed except to limited extent.