
(2004) 01 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

ATUL VIRMANI

APPELLANT

Vs

HOTEL HAYAT REGENCY-Opposite party

RESPONDENT

Date of Decision : 24-01-2004

Acts Referred:

Citation : 2004 2 CPJ 392

Hon'ble Judges : Rumnita Mittal , Mahesh Chandra J.

Advocate : H.C.Singh , S.Walarmathy

Judgement

1. THE present complaint has been filed under Section 17 of the Consumer Protection Act by Mr. Atul Virmani against M/s. Hotel Hayat Regency, Bhikaji Cama Place, New Delhi. THE case of the complainant is that he came to Delhi along with his Maruti Gypsy white colour car bearing registration No. UP-07-3-9149 which he had earlier purchased from M/s. Rohan Motors, Dehradun for Rs. 2,86,395.10 p. According to the complainant he got installed accessories worth Rs. 50,000/- in the said vehicle and the vehicle was insured third party but theft was not included in the policy. THE complainant came to Delhi for studies and was temporarily staying At E-89, ground floor, Kalkaji, New Delhi. THE case of the complainant is that on 18.9.1996 at about 11.15 p.m. he visited the O.P. hotel after paying a fee of Rs. 900/- vide Receipt No. 070708 dated 18.9.1996. This fee included the entrance fee as well as charges for safe parking of the vehicle. It is stated that on arrival at the hotel, the representative of the O.P. demanded the keys of the vehicle for parking the vehicle at the parking lot in safe custody. Hence the complainant delivered the possession of the vehicle to the representative of the O.P., who drove the car to the parking lot. THE representative of the O.P. issued a Docket as receipt for delivery of the vehicle to the complainant which he had to produce while checking out of the hotel. It is further stated that on production of the said Docket, the vehicle of the complainant was to be brought at the place where it has been taken from the complainant. THE complainant checked out of the Hotel at 1.40 a.m. on 19.9.1996 and presented the Docket to the representative of the O.P. who had keys of the vehicle. However, the representative of the O.P. informed the

complainant after half an hour, that the car of the complainant is missing from the hotel parking place. THE Hotel staff also, informed that vehicle of the complainant was permitted to go from the parking place between 12.20 a.m. to 12.40 a.m. on 19.9.1996 and there is an entry in the register regarding the checking in and checking out of the vehicle. THE complainant himself went to the hotel parking place but did not find his vehicle. THE hotel staff called the police and a report was dictated by the staff of the O.P. and the complainant signed it. According to the complainant the vehicle also contained Rs. 2,500/- in cash, registration certificate of the vehicle, insurance paper and driving licence of the complainant. It is stated by the complainant that he had delivered the vehicle to the O.P.'s staff with the assurance that the said vehicle shall be delivered back to the complainant when he checks out from the hotel. THE consideration for said service was included in the entrance fee. However, the O.P. had not taken any care of the vehicle and negligently permitted the vehicle to go without production of Docket ticket of the vehicle. It is also alleged that bailment was created under Chapter IX of the Contract Act and the O.P. is bound to return the vehicle or pay the damages. THE complainant went back to Dehradun and sent a request to various authorities to intervene in the matter but nothing was done. THE O.P. assured the complainant that payment of adequate damages were be done but did not do so. Hence the complainant served a legal notice to the O.P. through his Counsel on 28.1.1997 and demanded Rs. 5,02,895/- as cost of the vehicle, interest and damages. However, the O.P. in reply to the notice disclaimed its liability to pay any amount as damages. In reply to the notice, O.P. stated that as per terms printed on the back of the Docket, O.P. was not liable for the safe custody of the vehicle. Unable to get any relief, the complainant has filed the present complaint alleging gross negligence of service on the part of O.P. who failed to keep the vehicle in safe custody and failed to return and deliver the car to the complainant. THE complainant has claimed Rs. 2,86,395/- as cost of the vehicle, Rs. 50,000/- as cost of accessories. Rs. 2,500/- lying cash in the vehicle and Rs. 72,600/- as damages for non-use of the vehicle, Rs. 1,10,000/- for mental torture, Rs. 1,500/- as cost of notice. Besides filing his affidavit, the complainant has filed a copy of the purchase receipt of the vehicle, copy of the cash memo, copy of the insurance policy and copy of the receipt issued by the O.P. for entering in the hotel, copy of the FIR, copy of the Docket issued at the time of delivery of the car and other letters written to various authorities.

2. IN its reply, the O.P. stated that service rendered to the complainant was free service and no monetary consideration was paid by the complainant to the O.P. Hence, the complainant is not a consumer in respect of parking facilities availed by him and hence the complaint does not fall within the purview of the Consumer Protection Act, 1986. It is also stated that there has been no negligence in service on the part of O.P. It is further stated that as regards the plea of bailment taken by the complainant, this plea is not maintainable before the Consumer Forum and appropriate remedy lies before the Civil Court. The O.P. admitted that complainant visited the hotel on 18.9.1996 and voluntarily handed over the keys

of his Maruti Gypsy car to the valet on duty for purpose of getting the vehicle parked. The car valet handed over the Docket to the complainant but for this service, no monetary consideration of parking fee was charged and the aforesaid facilities are being provided by the hotel merely in the nature of convenience and comforts to the visitors. It is stated that no legal duty devolves upon the hotel or its staff for keeping the vehicle parked in the hotel premises. It is also stated that on the reverse of every car Docket issued to the visitor, a disclaimer notice is printed by which the visitors are informed that the vehicle can be parked within the hotel premises at their own risk and that the hotel would not be liable for any loss or damages to the vehicle parked in its premises. A copy of the Docket has been filed by the O.P. (Annexure 1). The O.P. stated that the complainant went into hotel discotheque by paying entry fee of Rs. 900/- which was charged only for the use of the discotheque and did not include any parking fee. After the complainant made his complaint of his missing car it was found as per entry in the parking register that the complainant's vehicle was driven out of the hotel between 12.20 a.m. and 12.40 a.m. It is stated that the hotel was not liable for any loss suffered by the complainant as the complainant voluntarily availed the parking facilities being fully aware that the parking was at his own risk. IN support of the above contentions affidavit of Shri Ashwin A. Shirali, Company Secretary of the O.P. has been filed. Besides a copy of the car Docket and the conditions printed on its back has been filed. We have heard the arguments from both sides and have carefully considered the entire documents/ evidence on record. The facts are not disputed. It is admitted by the O.P. that the complainant visited the hotel on 18.9.1996 and delivered his car to the car valet on duty for getting his vehicle parked in the parking area. The car valet handed over the Docket to the complainant. However, after few hours when the complainant came out and delivered the Docket to the car valet for bringing the car from the parking area, the car was found missing from the parking area and the staff of the O.P. failed to deliver back the car to the complainant on presentation of the car Docket. On inquiry it was found that the car was permitted to go from the parking place between 12.20 a.m. and 12.40 p.m. and there was a entry in the register maintained by the O.P. about it. It is thus not disputed that the Maruti Gypsy car was delivered to the representative of the O.P. along with its keys and Docket was issued to the complainant who was to produce the same for getting the vehicle at the time of checking out from the hotel. It is also not disputed that the complainant had paid fee of Rs. 900/- to the O.P. vide Receipt No. 07078 dated 18.9.1996. The dispute is whether this fee included the fee for service rendered by the O.P. regarding entrance and safe parking of the vehicle. Whereas the case of the O.P. is that this service was free and no separate fee was charged for this service and hence the complainant is not a consumer as no consideration was paid for the service. We are unable to accept the arguments advanced by the learned Counsel for the O.P. that since no separate fee was charged for parking the vehicle, the services rendered by the O.P. were free and hence not covered under the Consumer Protection Act, 1986. It is the general practice in hotels to provide car valet service to the visitors and

the fee for the same is included in the entry fee. Once the vehicle has been delivered to the car valet who is representative of the hotel, the same has to be delivered to the visitor only on presentation of the Docket. In the instant case, fee of Rs. 900/- was charged from the complainant as entry fee including parking fee and other services rendered for the custody of the vehicle while the vehicle remains in the custody of the O.P., the safe custody of the vehicle becomes the duty of the hotel or its staff and if the vehicle is lost due to negligence of the hotel staff, the hotel management cannot escape its liability for negligence and deficiency in service. In the instant case the car of the complainant was delivered to the car valet but the staff allowed the vehicle to be taken out from the hotel premises without the presentation of the Docket issued for the said car. Certainly the staff of the O.P. intentionally or unintentionally allowed the car to go out of the premises without obtaining the Docket. The O.P. is liable for the action of its staff or representative hence O.P. cannot escape the responsibility for the loss of vehicle of the complainant while it was in the custody of the O.P. at the parking lot.

The Hon'ble National Commission in *Mahesh Enterprises v. Arun Kumar Gumber and Others*, II (2001) CPJ 1 (NC), has held Authorised Parking staff is responsible for theft of the car and also held that the facts constitute bailment and the complainant is entitled for compensation. The facts of the present case are almost similar. Hence in our view the O.P. is liable for deficiency in service.

3. ANOTHER contentions raised on behalf of O.P. is that on the back of the Docket it is mentioned that parking of the vehicles is entirely at owner's risk and the hotel disclaim responsibility for any theft or damages, etc. It has been argued that this was in the knowledge of the complainant when he delivered the vehicle to the hotel staff. It has been argued that whose there is term of the contract, the parties are bound by the terms of the contract. It is relevant to note that the conditions printed on the back of Docket are not generally brought to the notice of the consumers. There is nothing on record to prove that complainant was specifically told about this condition that the hotel will not be responsible for the theft or loss of the vehicle. Had it been so, the complainant would not have handed over the keys of the vehicle to the staff of the O.P. In the instant case, staff of the O.P. intentionally or unintentionally permitted the vehicle to be taken out without obtaining the Docket from the owner. This itself is sufficient to prove deficiency in service on the part of the O.P. for which the O.P. is liable. As regard the amount of compensation demanded by the complainant is concerned, the vehicle was purchased in January, 1996 as date of registration is 25.1.1996. At that time the price paid by the complainant was Rs. 2,86,395/-. The vehicle was stolen after about 9 months. During this period the value of the car is reduced due to normal wear and tear hence we assess the price of the car at the time of theft at Rs. 2,00,000/-. There is no evidence to prove that accessories worth Rs. 50,000/- were installed in the car. The complainant has also not filed any evidence to prove that there was cash of Rs. 2,500/- in the car. Hence no compensation can be paid on these two counts. Similarly, there are not

sufficient ground for awarding any damages for non-use of the vehicle or for mental torture as claimed by the complainant, as we are inclined to award interest on the assessed price of the vehicle. In *Laxmi Vilas Bank Ltd. and Others v. P.R. Krishan and Others, I* (1995) CPJ 43 (NC), Hon''ble National Commission has held that awarding interest and compensation amounts to double compensation which is not justified. However, the complainant should be allowed cost of litigation as he has been fighting this case for the last six years.

4. IN view of the above discussions, we have found the O.P. guilty for deficiency in service in not ensuring the safety of the car entrusted to the O.P. Hence the O.P. is directed to pay to the complainant a sum of Rs. 2,00,000/- as price of the vehicle along with 10% interest from the date of theft till payment. Since interest is sufficient compensation, no further compensation for mental agony or damages for non-use of the vehicle are being awarded. However, the O.P. is directed to pay Rs. 5,000/- as cost of litigation to the complainant. The above order should be complied with within 30 days from the date of receipt of the order failing which the complainant shall be free to take appropriate action under Sections 25/27 of the Consumer Protection Act, 1986. The above mentioned complaint stands disposed of in above terms. Complaint disposed of.