
(2008) 08 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

Bikajicama Place

APPELLANT

Vs

Atul Virmani

RESPONDENT

Date of Decision : 01-08-2008

Acts Referred:

Citation : 2008 0 NCDRC 58 : 2008 3 CPJ 281

Hon'ble Judges : R.C.Jain , P.D.Shenoy J.

Final Decision : Appeal dismissed

Judgement

1. THE issue involved in this case is if the keys of the car given by the customer of a Five Star Hotel for parking to the uniformed valet of the hotel is stolen whether the Five Star Hotel is responsible for making good the loss to the consumer.

2. MR. Atul Virmani came to Delhi by his Maruti Gypsy, which he had purchased from M/s Rohan Motors, Dehradun for Rs. 2,86,395. It is the say of the complainant that accessories worth Rs.50,000/- were installed in the said vehicle which was insured against third party claim but the peril of theft was not included in the policy. The case of the complainant is that on 18.9.1996 at about 11.15 p.m. he visited the Hyatt Regency (the Hotel) by paying a fee of Rs.900/-. According to the complainant this fee included the entrance fee as well as for the safe parking of the vehicle. On arrival at the hotel the representative of the hotel demanded the key of the vehicle for parking the vehicle at the parking lot in safe custody. Therefore, the complainant delivered the possession of the vehicle to the representative of the hotel who drove the car to the parking lot. The valet had issued a docket as receipt for delivery of the vehicle to the complainant which he had to produce while checking out of the hotel. When the complainant came out of the hotel at 1.40 a.m. on 19.9.1996 and presented the docket to the valet who had the key of the car, the latter informed him after half an hour that the car of the complainant was missing from the parking place. The hotel staff also informed that the 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 hotel staff called the police and a report was dictated by the staff of the hotel and was signed by the complainant. According to complainant vehicle contained Rs.2,500/- in cash apart from the driving licence of the complainant.

The case was contested by the hotel stating that valet service rendered was a free service and the complainant is not a consumer under the Consumer Protection Act, 1986. The hotel authorities admitted that the complainant had visited on 18.9.1996 and handed over the keys of his Maruti Gypsy to the valet on duty for the purpose of getting the vehicle parked. The valet had handed over the docket to the complainant but no monetary consideration or parking fee was charged. Hotel authorities were not legally bound to keep the vehicle in the hotel premises. It was also stated that on the reverse of every car docket issued to the visitors, a disclaimer notice is printed through which the visitors were informed that the vehicle could be parked within the hotel premises at their own risk and that the hotel would not be liable for the loss or damage to the vehicle parked. It was further submitted that the complainant had gone to the discotheque by paying entry free of Rs.900/- which was charged only for the use of discotheque which did not include any parking fee.

3. THE State Commission after going through records and hearing the counsel for the parties held that there was deficiency in service by the hotel in not ensuring the safety of the car entrusted to their custody. Accordingly, the hotel was directed to pay the complainant a sum of Rs.2,00,000/- along with 10% interest from the date of the theft till the date of the payment with Rs.5,000/- as cost. Aggrieved and dissatisfied by the order of the State Commission the hotel has filed appeal before us.

4. THE learned counsel for the hotel brought to our notice a copy of the token/ car docket issued to those who use the valet facilities wherein on the reverse of the docket a notice/disclaimer is printed wherein it is mentioned as follows: 1. Parking of vehicle is entirely at owners risk. Hotel Hyatt Regency Delhi/Asian Hotels Limited disclaim all responsibility for any theft/damage or destruction of the vehicle/its contents caused by fire, third party acts, force majeure or any other cause whatsoever. 2. Vehicle owners are advised not to leave any valuable items in the vehicle at the time of parking. 3. THE vehicle is being permitted to be parked in the hotel area on the premise that the vehicle does not contain any firearms, explosive or narcotics substances. Owners Asian Hotels Ltd. He further brought to our notice the judgment of the National Commission in Bombay Brazzerie Vs. Mulchand Agarwal and another I (2003) CPJ 4 (NC) wherein it was held as follows : Keeping in view the aspect of consumer factor or consumer component of consumer surplus as aforementioned we are of the opinion that Mulchand is certainly entitled to compensation for the mental tension, harassment and inconvenience caused to him. Mulchand has claimed Rs.25,000/- but in our view award of Rs.10,000/- will meet the ends of justice. THERE cannot be any standard for measuring damages in such a situation. In the complaint

Insurance Company has also been added as co-complainant by Mulchand. It was submitted by Mr. Vishnu Mehra, learned counsel appearing for the Insurance Company that in case Consumer Forum allows the complaint and grants compensation, Insurance Company is entitled to be reimbursed inasmuch as the price of the car had since been paid by the Insurance Company to Mulchand. We are unable to appreciate such an argument. For one thing if the complainant Mulchand had been paid price of the car by the Insurance Company under the policy of insurance he cannot claim the same amount again in the complaint on a pretext as a consumer under the Consumer Protection Act, 1986. He cannot get better right by also adding the Insurance Company as co-complainant Insurance Company cannot be a consumer under the Consumer Protect Act and has certainly no cause against Hotel. We cannot allow the complainant to enrich himself when we find that he had already received the price of the car from the Insurance Company. If the Insurance Company is of the view that fault lay with the Hotel it could bring a civil suit against the Hotel and could implead Mulchand complainant as well, but Mulchand cannot file his complaint for the benefit of the Insurance Company. We, therefore, allow this appeal and set aside the order of the State Commission except to the extent of Rs.10,000/- which amount Mulchand, complainant shall be entitled from the appellant. We make no order as to costs.

5. SUBMISSIONS of the learned counsel for the respondent : Learned counsel for the respondent submitted that the fees of Rs.900/- paid for entering discotheque includes charges for any service rendered by the hotel. No customer would visit the hotel and use the valet facility unless he is sure that the car is safe. There is no time for any customer to read the reverse of the docket in detail at the time of handing over keys of the car. When a person goes to a Five Star hotel he does not just pay for the food served he pays for the general atmosphere, air condition, decoration, safety and total environment of the hotel. He submitted that his car was insured only for third party risk and accordingly he will not be in a position to claim any compensation from the Insurance Company.

6. HOTEL Hyatt Regency is currently known as only Hyatt. This hotel is one of the hotels run by the chain of hotels in different countries. In fact, the name Board does not mention that it is a hotel, it is only called Hyatt because it is so famous and so popular that there is no need to mention the word hotel. The five star hotels provide several facilities as the customers pay heavy price for room rent, meals etc. They provide some facilities free of cost like newspapers in the hotel room, complimentary fruit basket and mineral water bottles. Similarly, left luggage facility for a few hours after early checking out is also provided and so also valet parking facilities. These so called free services are not actually free because they are more than made up by exorbitant rental charges, very high charges for food and very high entrance fee for discotheque etc. It is not in dispute that the complainant had used the hotel facilities by paying Rs.900/- as entry fee to discotheque in addition he must have spent money for his food. The hotel does not dispute that the car key was taken by the valet of the hotel and

vehicle was not delivered to the owner who had the docket. It is due to sheer negligence of the hotel staff that they had allowed the car to be stolen and taken out by some unauthorized person for which there was an entry in their register.

We have only perused copy of the sample docket where in small letters disclaimer is written. Those who visit Five Star hotels and use the car parking facilities are aware that after the car keys are given to the valet there is hardly any time for the consumer to read docket conditions written on the reverse of the docket because there would be a fleet of cars entering and exiting from the hotel. When a uniformed liveried valet with his imposing figure asks for the car keys he exudes confidence in the consumer and therefore, for the management of a Five Star Hotel to shirk the responsibility of the safety of the car parked in their premises does not augur well. The hotel is liable for the negligence of its staff.

7. THIS view is fortified by the decision of this Commission in Mahesh Enterprises Vs. Arun Kumar Gumber & Ors. 11 (2001) CPJ (NC) 1 wherein it was held that - In our opinion, in the facts and circumstances of the case, the State Commission was legally right in holding that the facts and the circumstances would constitute bailment and the person responsible for the management of the parking area was liable to make good the loss. In Savita Garg (Smt.) Vs. Director, National Heart Institute (2004) 8 SCC 56 Apex Court held that If hospital authorities charge high fee for treating some of the patients and do not charge fees for some patients then there is a subsidy provided to the patients who are treated free of charge and if there is negligence in treating those patients free of charge is also be covered by the deficiency in service and the hospital would be liable for medical negligence and payment of compensation.

8. IN view of the above Judgment even though the hotel might have provided valet parking facilities free of charge still it would be covered by the deficiency of service under Consumer Protection Act, 1986 as it is charging for other services at a very high rate. If the hotel authorities cannot keep the car safely they should have put a big board at the entrance of the hotel proclaiming Beware giving car keys to the valet of this hotel does not ensure safety of your car, Management is not responsible for theft of the car. This has not been done by the hotel. Therefore, we do not see any illegality, material irregularity or jurisdictional error in the order passed by the State Commission. Resultantly this appeal is dismissed. There shall be no order as to costs.