
(1995) 10 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

COMMISSIONER, CORPORATION OF MADRAS

APPELLANT

Vs

S.ALAGARAJ

RESPONDENT

Date of Decision : 30-10-1995

Acts Referred:

Citation : 1995 0 NCDRC 65 : 1995 3 CPR 473 : 1996 1 CPJ 54

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , R.THAMARAJAKSHI J.

Advocate : R.NEDUMARAN , S.MUTHURAMAN

Judgement

1. THIS Revision Petition has been filed against the order dated January 31,1995 of the State Consumer Disputes Redressal Commission, Tamil Nadu passed in A.P No. 1054/94. The Commissioner, Corporation of Madras who is the Revision Petitioner before us was the first Respondent before the State Commission and the first opposite party before the District Forum while the Tamil Nadu Ex-Servicemen's Corporation Ltd. through its General Manager was the second respondent before the State Commission and the second opposite party before the District Forum is the second respondent before us.

2. THE facts according to the complainant are that on 21.8.93 at about 7.00 p.m., he parked his two wheeler bearing Registration No. TDZ 6804 at Pangal Park area and paid a sum of Re. 1/- as parking charge. The area belongs to the Corporation of Madras, and the Tamil Nadu Ex-Servicemen's Corporation Ltd. had collected the parking fee. When the complainant returned at about 8.10 p.m. after completing his shopping, he found his two wheeler missing from the parking area. The vehicle was reportedly stolen. An F.I.R. was filed at Pondy Bazar Police Station. The vehicle was not recovered. The complainant alleged that the opposite party Nos. 1 and 2 are responsible for the safety and security of the vehicle parked in their area as they are receiving monetary consideration and as such they had committed deficiency in service and are liable to pay damages and cost of the vehicle. The second opposite party/second respondent was absent before the District Forum as well as the State Commission. The District Forum held that it was not established by the complainant that the

employee who was in-charge of collecting the fee is responsible for the safety of the vehicle. It was only a nominal fee which was collected from the owner of the vehicle. The collection of the parking charges is not with a view to earn money but to regulate the traffic. The District Forum therefore, dismissed the complaint.

3. THE complainant went in appeal before the State Commission, Tamil Nadu. The State Commission was of the view that if the purpose of a separate parking area is to regulate the traffic, what is usually done is to plant posts "Parking Area" and "No Parking Area" and the Traffic Police will control the parking. But in the instant case parking area has been earmarked and the parking fee of Re. 1/- is collected for every two wheelers. In this regard the State Commission held as follows: ½ (i) The person or authority which receives the vehicle for parking on a parking fee therefor and issues a receipt is in a position of a bailee under Section 148 of the Contract Act, (ii) The opposite parties failed to establish that they had taken proper care of the vehicle as a man of ordinary prudence would have taken, (iii) The Corporation of Madras had not produced any specimen copy of the parking ticket to prove their contention that there was endorsement on the reverse of the ticket mentioning that the vehicle was parked at the risk of the owner, (iv) Even assuming such an endorsement was there, the same cannot absolve the bailee of its liability. In the light of above, the State Commission held that there was a clear case of negligence on the part of the bailee and concluded that the complainant was entitled to claim compensation. In the result, the State Commission set aside the order of the District Forum and allowed the appeal and directed the opposite parties to pay to the complainant, (i) Rs. 17

4. 00/- BEING the value of the vehicle with interest at 18% thereon from 21.8.93 till payment, (ii) a sum of Rs. 2000/- as compensation for the mental pain and agony, and (iii) Rs, 2,000/- as costs for the proceedings before the District Forum and before the State Commission. In the Revision Petition, the Petitioner namely the Commissioner, Corporation of Madras has again taken the plea that, (i) in the interest of general public and with a view to regulate the traffic in the busy place of the city, the Corporation has earmarked certain places in the Corporation area as parking area and leased out the same to the Contractor and the Petitioner-Corporation is not doing any business for profit, and (ii) they are thus only lessor of the parking area and they are not liable for breach of service by the lessee-contractor.

5. WHEN the case came up before us for hearing, there was no appearance of respondent No. 2 either in person or through authorised representative or Counsel. We have carefully perused the records and heard the Counsel in the case. The parking area in the present case is mainly for ensuring orderly parking and smooth flow of traffic, and the parking fee collected is nominal. In this context, we are of the opinion that the person who provides a facility of parking space is collecting a nominal parking fee for the said service and he is not undertaking to ensure the safety of the vehicle. We, therefore, allow the revision petition and set aside the order of the State Commission. There is no order as to

costs. Before parting with the case, we would like the Corporation of Madras to evolve a system whereby the normal expectation on the part of the general public that their vehicles parked in the designated area after payment of a fee would be secure until they take them back, is fulfilled.