(2000) 11 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Mahesh Enterprises APPELLANT

Vs

ARUN KUMAR GUMBER RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Citation : 2001 1 CPC 426 : 2001 1 CPR 40 : 2001 2 CPJ 1

Hon'ble Judges : S.C.Sen , C.L.Chaudhry , J.K.Mehra J.

Final Decision : Revision Petition disposed of

Judgement

1. THIS revision petition is directed against the order dated 4.2.1997 passed by the State Consumer Disputes Redressal Commission, Delhi. The brief facts out of which this revision petition has arisen may be stated as under :

2. THE complainant, Arun Kumar Gumber, went to Indira Gandhi International Airport to see off his brother on 5.8.1993. He parked his Maruti Car in the authorized parking area for which he was given receipt after charging Rs. 10/-. THE complainant on his return found that the car was missing. He lodged a report with the Police Station Indira Gandhi International Airport. In spite of best efforts, the car could not be traced. THE car was not covered by insurance at the time of mishap. THE complainant filed a complaint before the District Forum impleading the Indira Gandhi International Airport Authority and M/s. Mahesh Enterprises who was managing the parking area claiming Rs. 1,95,852/- being the price of the new car, besides, Rs. 40,000/- on account of compensation. Opposite party No. 2, M/s. Mahesh Enterprises, failed to appear or filed a reply before the District Forum. THE case was contested on behalf of the International Airport Authority (hereinafter referred to as the Airport Authority). In the reply a plea was taken that the complainant did not hire the services of the contesting respondents and at no stage was there a privacy of contract between the complainant and the respondent. It was also pleaded that the Airport Authority had entered into an agreement with Mahesh Enterprises vide Licence Agreement dated 14.10.1992. Under the terms of the licence, the Airport Authority was not responsible for deficiency in service or negligence on the part of the licensee. It

was further pleaded that the parking charges was collected by the licensee and the responsibility for the loss, if any, was that of the licensee. THE parties lead evidence before the District Forum. On the basis of the material placed on record, the District Forum allowed the complaint and held that the Airport Authority was as much responsible for taking care of vehicle entrusted to its licensee as the licensee himself; directed the opposite party to pay Rs. 1,35,972/- being the price of the car and Rs. 5,000/- on account of mental agony. Aggrieved by the order of the District Forum, the Airport Authority as well as the Mahesh Enterprises, filed an appeal before the State Commission. On behalf of the Airport Authority it was urged that the entire management of the parking was handed over to the licensee under the written agreement and no part of the management was retained by the Airport Authority and there was no privacy of contract between the Airport Authority and the complainant. The amount of compensation was also challenged. On behalf of M/s. Mahesh Enterprises, it was urged that the facts alleged by the complainants did not constitute bailment and the contractor was not liable to indemnify the complainant. The State Commission, on appraisal of the evidence and in the light of the legal position, returned the finding that the facts constitute bailment and the person responsible for the management of the parking area was liable to make good the loss. The State Commission also returned the finding that the Airport Authority was not liable to satisfy the claim, in view of Clause (9) of the agreement entered into between the Airport Authority and M/s. Mahesh Enterprises. The State Commission also fixed the price of the Maruti Car at Rs. 1,22,375/-. The State Commission modified the order of the District Forum to the extent that the Airport Authority was not liable to pay any amount to the complainant. However, the amount to be paid by the Mahesh Enterprises was reduced to Rs. 1,22,375/-. M/s. Mahesh Enterprises had filed the present revision petition assailing the order of the State Commission.

We have heard the learned Counsel for the parties. It was urged on behalf of the petitioner that the facts and circumstances did not constitute bailment and the State Commission was not legally correct to hold to the contrary. It was also urged that the market price of the car was wrongly assessed at Rs. 1,22,375/- by the State Commission. On behalf of the complainant it was argued that the order of the State Commission was legal and valid and called for no interference.

3. WE have given our though full consideration to the respective pleas of the parties. 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. The findings recorded by the State Commission are legally correct and call for no interference. The State Commission has also rightly interpreted Clause (9) of the Licence Agreement between the Airport Authority and the Mahesh Enterprises and recorded the following finding : "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 claim, 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 point that arises for consideration is as to what was the price of the car at the relevant time. On this aspect of the case, the finding recorded by the State Commission is reproduced below : "The next important question is regarding the amount. The copy of the invoice dated 14.9.1989 shows that it was a Deluxe 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 Dx 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 30.8.1992, namely on 5.8.1993. 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 deduction 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/-."

4. WE find that the State Commission committed a legal error in fixing the price of the car at Rs. 1,22,375/-. The State Commission had taken the price of the car at Rs. 1,35,972/- as on 30th August, 1992. This was not correct. The price shown for the purpose of the insurance may not be a correct market price. It is an admitted fact that the car was purchased by the complainant on 14.9.1989 for Rs. 1,36,695/- and it was stolen on 5.8.1993. The complainant used the car for almost 4 years. If the price of the car as on 14.9.1989 was Rs. 1,36,695/-, its price could not be Rs. 1,35,972/- on 30th August, 1992, as noticed by the State Commission. The price of the car as on 14.9.1989 was Rs. 1,36,695/- and it was stolen on 5.8.1993, after a period of four years. Deduction on account of depreciation had to be made for 4 years and not for one year as held by the State Commission. So, we hold that the price of the car on 5.8.1993 would be Rs. 90,000/-. So we, modify the order of the State Commission to the extEnt that the price of the car would be Rs. 90,000/- and not Rs. 1,22,375/-. The District Forum allowed Rs. 5,000/- for the mental agony, which has been affirmed by the State Commission. WE set aside the compensation on account of mental agony. The District Forum had allowed interest at the rate of 18% per annum, which, in our opinion, is on the higher side. WE reduce the interest to 12% p.a. from 5.S.1993 on Rs. 90,000/- till the date of payment. The order of the State Commission is modified to the extent indicated above. The parties are directed to bear their own costs. The revision petition is disposed of as above. Revision Petition disposed of.

