
(2015) 05 NCDRC CK 0173

In the National Consumer Disputes Redressal Commission

Case No : 4268 of 2009

MUNICIPAL CORPORATION CHANDIGARH

APPELLANT

Vs

DR. D.P. MEHTA & ANR

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 05 NCDRC CK 0173

Hon'ble Judges : V.K. Jain, B.C. Gupta

Advocate : M. S. Doabia, G. C. Bedi

Judgement

1. The complainant, in revision petition no. 4268 of 2009, namely Dr. D. P. Mehta, parked his car bearing registration no. CH-01R-0381, in the parking lot in the area of Gurdev Studio, Sector-17, Chandigarh and paid the parking fee of Rs. 2.50/- to opposite party no. 2, Sh. Rajinder Kumar. The vehicle was parked at 10.30am. When the complainant returned to the parking lot at 11.00am, the car was found stolen. The matter was reported to the police and an FIR was registered at Police Station Sector-17, Chandigarh. The vehicle was later recovered by the police in Ludhiana, but it was found that certain components such as stereo, battery and tyres had been removed and the body of the vehicle had been damaged, thereby causing a loss of Rs. 18,900/-to

the complainant. The complainant, therefore, approached the concerned District Forum seeking compensation of Rs. 50,000/- detailed as under:-

"1. Cost of spares/repair as illustrated in para-17 Rs. 6,000/-

2. Cost of extra petrol consumed as Detailed in para-19 Rs. 13,140/-

3. Wear and tear because of the Mileage done by the car after theft (Rs. 1/2x34000 kms). Rs. 17,000/-

Total: Rs. 49,040/- Say Rs. 50,000/-

2. The Municipal Corporation Chandigarh was impleaded as opposite party no. 1, whereas the Contractor was impleaded as opposite party no. 2 in the complaint. In its reply, the petitioner, Municipal Corporation Chandigarh pleaded that it was opposite party no. 2, who was charging parking fee from the vehicle owners as per the terms and conditions of the licence granted to him by the Corporation and the entire profit earned from the parking of the vehicles was retained by him. It was further stated in the reply that in terms of condition no. 27 of the allotment letter issued by the Corporation to opposite party no. 2, he alone was liable in a case of theft of the vehicle. The District Forum held that opposite party no. 1, Municipal Corporation Chandigarh was not responsible for theft of the vehicle and it was the sole responsibility of opposite party no. 2 to safeguard the vehicle, when it was parked at the site from where it was stolen. The District Forum, therefore, dismissed the complaint qua opposite party no. 1, but held opposite party no. 2 deficient in rendering services to the complainant. A sum of Rs. 7,450/- was awarded to the complainant towards price of the stolen components of the vehicle and another sum of Rs. 10,000/- was awarded to him as compensation, besides Rs. 5,000/- towards the cost of litigation.

3. Being aggrieved from the order of the District Forum, the complainant approached the concerned State Commission by way of an appeal. Vide impugned order dated 11.09.2009, the State Commission held that though the liability to pay to the complainant for the damage caused to him due to theft of the vehicle rests solely on opposite party no. 2, yet the payment can be made to the complainant by opposite party no. 1 out of the security amount, it was retaining on behalf of opposite party no. 2. The appeal filed by the complainant was, therefore, partly allowed by directing opposite party no. 1 to pay the amount of compensation to the complainant in case opposite party no. 2 did not respond to the summons for executing the decree. Being aggrieved from the direction given by the State Commission, the Municipal Corporation Chandigarh is before us by way of this revision petition.

4. The complainant in revision petition no. 4522 of 2009 namely Sh. Vikram parked his scooter in the parking lot of opposite party no. 1, Sh. B. S. Dhillon. On 17.09.2008, the scooter

was stolen from the parking lot, an FIR was lodged by him with Police Station Sector-17, Chandigarh. The aforesaid complainant then approached the concerned District Forum, alleging deficiency in services on the part of the Contractor as well as Municipal Corporation Chandigarh.

5. The complaint was resisted by the Contractor on the ground that the vehicle might have been stolen from somewhere else and not from the parking area run by him. It was also claimed by the Contractor that as per the terms and conditions agreed by him and Municipal Corporation Chandigarh, he could not be held liable in a case of theft of vehicle from the parking lot. The Municipal

Corporation Chandigarh resisted the complaint, claiming that there was no deficiency on its part in rendering services and it was the Contractor who was responsible to compensate the complainant for the theft of this vehicle.

6. The concerned District Forum vide its order dated 30.03.2009, allowed the complaint only against the Contractor, Sh. B. S. Dhillon and directed him to pay a sum of Rs. 45,000/- to the complainant alongwith another sum of Rs. 2,000/- towards cost of litigation.

7. Being aggrieved from the order of the District Forum, the Contractor approached the concerned State Commission by way of an appeal. Vide impugned order dated 01.10.2009, the State Commission held that both the opposite parties i.e. the Contractor Mr. B. S. Dhillon as well as Municipal Corporation Chandigarh were jointly and severally liable to compensate the complainant, who was not a party to the agreement between the Contractor and the Municipal Corporation Chandigarh and directed both of them to pay the amount of Rs. 45,000/- alongwith cost of litigation quantified as Rs. 2,000/- to the complainant.

8. Being aggrieved from the order of the aforesaid order, the Municipal Corporation Chandigarh is before us by way of this revision petition.

9. As far as the liability of the Contractor is concerned, the order passed by the State Commission is final since it has not been challenged by the said Contractor. Consequently, in both the matters, the concerned Contractor would be liable to compensate the complainant. In the absence of any challenge from the Contractor, we cannot go into the legality or otherwise of the direction given by the State Commission, to the concerned Contractor, to compensate the complainant.

10. In Revision Petition No. 4268/2009, the State Commission has taken a view that Municipal Corporation Chandigarh is not liable to compensate the complainant though it should discharge the liability of the Contractor by making payment to the complainant out of the security deposit of the complainant lying deposited with it. The aforesaid order of the State Commission has not been challenged by the complainant Dr. D. P. Mehta and, therefore, has become final. The learned counsel for the complainant, Dr. D. P. Mehta submits that since the order passed by the State Commission was in the favour of the complainant, he could not have challenged the said order. We, however, are unable to accept the contention. The State Commission expressly held that it was only the Contractor, who was liable to pay to the complainant. The aforesaid finding of the State Commission could have been challenged by the complainant irrespective of the direction given to the Municipal Corporation Chandigarh to discharge the liability of the Contractor by making payment out of the security deposit of the Contractor lying with it. Be that as it may, no direction for compensating the complainant can be given to the Municipal Corporation Chandigarh since the complainant hired the services of the parking site managed by the Contractor

and not by the Municipal Corporation Chandigarh, while parking his vehicle in the parking lot licenced by the Corporation. The vehicle was entrusted by him to the Contractor, and not to the Municipal Corporation. The Contractor cannot be said to an agent of the Corporation, while managing the parking site. The relationship between him and the Corporation was on Principal to Principal, and not on Agent to Principal basis. He had paid a fixed licence fee to the Corporation and they were not sharing the income earned from the parking lot. A complainant in a consumer dispute can seek compensation only from the service provider in case some deficiency on the part of the service provider is established in rendering services to him. Since the complainant did not hire or avail the services of the Municipal Corporation Chandigarh, he cannot be said to be the consumer of the said Corporation while parking the vehicle in the parking lot licenced to the Contractor.

11. During the course of hearing, the complainant who is present in person has shown to us the parking receipt, which was issued to him at the time the car was parked by him. A perusal of the said receipt would show that it was a receipt issued by the Contractor on his own behalf. Neither it was issued by the Corporation nor by the Contractor on behalf of the Corporation. Therefore, it cannot be said that the complainant had hired the services of Municipal Corporation Chandigarh while parking his vehicle in the parking lot licenced to the Contractor. In revision petition no. 4268/2009, the State Commission, therefore, has rightly held that the liability to compensate the complainant was solely of the Contractor.

12. In revision petition no. 4522/2009, the parking slip has not been placed on record. It was for the complainant to prove before the District Forum that he had hired or availed the services of the Municipal Corporation Chandigarh while parking his scooter in the parking lot licenced to the Contractor, Mr. B. S. Dhillon. In case, the receipt issued to him was similar to the receipt issued to the complainant in revision petition no. 4268/2009, it would stand firmly established that the complainant in revision petition no. 4522/2009 also had hired the services of the Contractor and not of Municipal Corporation Chandigarh. Therefore, it would be difficult for us to uphold the order of the State Commission, holding Municipal Corporation Chandigarh to be jointly and severally liable alongwith the Contractor, Mr. B. S. Dhillon. The liability to compensate the complainant, in our view, would solely be of the Contractor.

13. The next question which arises for our consideration is as to whether the State Commission was justified in directing the Municipal Corporation Chandigarh to pay to the complainant out of the security deposit, in case the Contractor did not respond to the summon for executing the order of the consumer forum. In our view, giving such a direction even before filing of the execution petition was wholly premature. While hearing appeal against the order of the District Forum passed in the complaint, the State Commission was required to decide only whether both the opposite parties, one of them or none of them was liable to

compensate the complainant. The question of directing the Corporation to pay out of the security deposit could not have been considered while deciding the appeal preferred by the complainant, Dr. D. P. Mehta against the order of the District Forum.

14. For the reasons stated hereinabove, the order of the State Commission dated 01.10.2009, which has been impugned in revision petition no. 4522/2009, is hereby set aside and it is directed that the compensation amount of Rs. 45,000/- as well as the litigation cost quantified as Rs. 2,000/- shall be paid to the complainant only by the Contractor, Sh. B. S. Dhillon. The learned counsel for the Contractor, Sh. B. S. Dhillon, submits that the compensation awarded by the

District Forum has already been recovered by the complainant from the Insurance Company. If that is so, he can bring it to the notice of the District Forum, if and when execution of the order in question is sought by the complainant.

15. The order of the State Commission dated 11.09.2009, which has been impugned in revision petition no. 4268/2009, is set aside and the order passed by the District Forum is restored. It shall be open to the complainant to apply for execution of the aforesaid order, in accordance with law and during the execution proceedings it will also be open to the complainant to seek attachment of any amount of the Contractor, which may be lying deposited with Municipal Corporation Chandigarh. Both the revision petitions stand disposed of accordingly.