
(2002) 12 NCDRC CK 0112

In the National Consumer Disputes Redressal Commission

RAJESH

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Citation : 2003 3 CPJ 498 : 2003 3 CPR 395 : 2004 1 CPC 332

Hon'ble Judges : M.A.A.Khan , Sushma Tanwar J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal under Section 15 of the C.P. Act, 1986 (the "Act") by an opposite party against the order dated 8.5.1995, made by the District Forum, Udaipur in Complaint Case No. 828/1993. It arises under the following circumstances.

2. THE appellant is the THEkedar (Contractor) appointed by the Medical and Health Co-operative Society, General Hospital, Udaipur (the "Society") respondent No. 3 to keep Bicycles, Scooters, Motorcycles of the visitors to the Hospital in safe custody against payment of prescribed charges. THE Bicycle Stand is within the ear-marked space on the land of the General Hospital. Such land was allotted to the Society by the Superintendent, General Hospital (respondent No. 2) through public auction. In its turn the Society appointed the appellant as a contractor for six months from 7.6.1993 for making arrangements for the safe custody of visitors' Cycles, Scooters, etc. etc., in the space, reserved for the purpose and auctioned to the Society by respondent No. 2. THE terms and conditions of the Licence Agreement dated 5.6.1993, entered into between them, provided as under : "xxx xxx xxx" In the above back-drop the case of Sri Mohan Lal, complainant (respondent No. 1) was that in order to see his wife, who was admitted in Zanana Ward No. 6 in the General Hospital, he reached the said hospital on his Motor-cycle No. RSH 3775 and hired the services of the appellant for keeping the same in his custody till his return. The appellant took the delivery of the motor-cycle from him and issued token No. 800 to him. But when the complainant returned after some time and asked for the delivery of his motor-

cycle the said was found missing. On appellant's advice the complainant advised him to lodge his complaint with respondent Nos. 2 and 3 and also to the police officials concerned. The appellant, however, did not pay to him for the lost vehicle. He, therefore, filed his complaint before the District Forum.

The appellant contested the complaint mainly on the ground that he had neither sold any goods to the complainant nor agreed to provide to him his service for safe custody of his motor-cycle in question. The complainant was, therefore, not a "consumer" within the meaning of the term defined in Section 2(1)(d) of the C.P. Act, 1986 (the "Act").

3. THE Society (respondent No. 3) averred in the reply filed by them that the appellant was an appointed THEkedar for the purposes of keeping the cycles, scooters of the visitors to the hospital for consideration and, therefore, the appellant was responsible for loss of any cycle, scooter, from the stand, if a visitor had entrusted the custody of his vehicle to him. After having examined the version of the cases of the parties in the light of the evidence produced by them before it, the District Forum held that respondent No. 1 had hired the services of the appellant for consideration for keeping his motor-cycle in question in safe custody during the period he returned and had accordingly left his vehicle in appellant's custody, but the appellant rendered deficient services to him in not returning his vehicle. The Forum, therefore, decreed respondent No. 1's claim against the appellant for Rs. 10,000/- towards value of the lost vehicle, Rs. 1,000/- as compensation for mental agony and Rs. 200/- as cost of litigation. The complaint as against respondent Nos. 1 and 3 was dismissed.

4. HEAVILY relying upon the decisions of the National Commission in the cases of Rohini Group of Theatres v. V. Gopal Krishnan, II (1996) CPJ 1 (NC), and Mahesh Enterprises v. Arun Kumar Gumber & Ors., II (2001) CPJ 1 (NC), Mr. Vizzy Agarwala, the learned Counsel for the appellant, urged that charging of nominal fee from the visitors to the hospital, for parking their vehicles in the parking space, would not make the appellant a bailee so as to make him liable for the loss of vehicle by theft or otherwise. After having studied these cases, we are of the opinion that those do not help the appellant in any way in the facts and circumstances of the instant case. However, before we proceed to examine the applicability of the ratio decidendi of the two cases to the present case we would like to observe that on study of the material available on the record of the Forum we concur with the findings of the Forum that the complainant had hired the services of the appellant for consideration for keeping his motor-cycle in safe custody till his return from the ward of the hospital and that when, on his return from the ward, the complainant asked for the delivery of his motor-cycle, the appellant failed to deliver the same to the complainant. These facts are established by the affidavit of the complainant and the copy of token issued to him by the appellant Mr. Agarwala also could not dispute the finding recorded by the Forum in that behalf. Leaving aside at this stage the question as to whether the facts, found established in this case, make or do not make the appellant a

"bailee" within the meaning of the term defined in Section 148 of the Indian Contract Act, 1872, they conclusively create the relationship of a "consumer" and "provider of service" between the complainant and the appellant respectively, within the meaning of those expressions defined in Section 2(1)(d) of the Act.

5. APART from the above, the service hired by the complainant for consideration, was not free of charge, as is gathered from the Licence Agreement entered into between the appellant and respondent No. 3 (reproduced above). Therefore, the services promised to be rendered to the complainant by the appellant had all the characteristics of the term "service", as defined in Section 2(o) of the Act. The quantum of compensation, cost and value of the lost vehicle were not disputed before us.

6. NOW coming to the ratio decidendi of the two cases, relied upon by Mr. Agarwala, we find that although in the case of Rohini Group of Theatres (supra), it was observed by the Hon'ble National Commission that the opposite party (the contractor) had provided the parking space only to those who came to the theatre and the attendant only collected nominal fee for the parking of the vehicle in an orderly manner, but in the case of Mahesh Enterprises, the National Commission upholding the order of the State Commission making the licensee only liable, in his capacity as a bailee, quoted with approval the following finding of the State Commission. "The entire management of running the parking area has been handed over under the agreement by the Airport Authority to the licence 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 licence 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."

A bare reading of condition No. 6 of the above agreement clearly informs that the appellant had undertaken the obligation to make good the loss of the respondent No. 1, who had hired the service of the appellants for consideration for keeping his vehicle in safe custody till his return. This view is supported by the fact that when the Superintendent of the Hospital, vide his letter dated 28.9.1993, invited the attention of the Secretary of respondent No. 3 to Clause No. 27 of the Agreement of the Society with the Hospital and required him to get the complainant-respondent re-imbursed for the loss of his vehicle, the Society required the appellant to do the needful and the appellant, vide his affidavit dated 12.1.1994, assured the Society that he would abide by the order of the concerned Court/Authority in that behalf. The affidavit of the appellant referred to above, reads as under : "xxx xxx xxx"

The above discussion leaves us in no doubt that in the instant case the parking area was not ear-marked for ensuring orderly parking for smooth flow of traffic,

as was the position in the case of Rohini Group of Theatres (supra). Herein the Hospital Authorities had let out the parking space to the Society by public auction and the Society, in its turn, had issued licence to the appellant for the specific purpose of keeping the vehicles of persons coming to the hospital or other places for consideration. The appellant had obtained the licence to exploit the space for commercial purposes and for earning commercial profits. The Society had handed over to the appellant the entire management of running the parking area in accordance with the terms and conditions of the agreement entered into between them. The appellant had thus assumed the responsibility for the safety of the vehicle, which were parked on payment of prescribed charges. This position of facts, which we find fully established in this case, not only makes it distinguishable from the facts in the case of Rohini Group of Theatres (supra), and brings it closer to the facts in the case of Mahesh Enterprises (supra), but also constitute bailment. The appellant was, therefore, liable to make good the loss to respondent No. 1, the consumer. The impugned order does not call for any interference by us. In the result we find no force in this appeal and dismiss it with cost on parties. Appeal dismissed.