

(1993) 09 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

S. JAMBULINGAM

APPELLANT

Vs

MOHAMMAD ABDUL QADER

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Citation : 1995 1 CPJ 468 : 1995 2 CLT 118 : 1995 2 CPR 431

Hon'ble Judges : David Annoussamy , A.Veerapandian , J.Anjani Dayanand J.

Final Decision : Appeal dismissed

Judgement

1. -THIS is an appeal by the Opposite Party No. 1.

2. THE Complainant/Respondent No.1 herein filed a complaint against the present Appellant/Respondent No. 2 herein. THE first Opposite Party has taken on lease from the Opposite Party No. 2 the right to hire the cycle stand near the New Bus Stand, Pondicherry and to levy a charge of Re.1 per cycle. The case of the Complainant was as follows:- On 7.10.91 at 6.45 a.m. he entrusted his cycle to the Opposite Party No. 1. On the same day when he returned at 5.30.p.m. he found that his cycle was missing. His enquiry with Opposite Party No. 1 did not yield any result. He orally complained before the Station House Officer, Orieanpet Police Station who sent for the Opposite Party No. 1 asking him to find out his cycle or to pay him adequate compensation. The first Opposite Party first agreed to it, but later did not act upon the agreement. Aggrieved by the attitude of the Opposite Party No. 1 and after writing to the Opposite Party No. 2, the Complainant approached the District Forum with the following prayed: 1. to compensate properly for the loss of the bicycle and 2. to give proper compensation also for} the inconvenience, hardship and mental agony.

The Opposite Party No. 2 took a plea that the whole responsibility was on the first Opposite Party as per the agreement between the Opposite Party Nos. 1 and 2 which fact was not disputed by the first Opposite Party. The specific case of the first Opposite Party was as follows:-

3. THE Complainant approached him only two days after the alleged missing of

the bicycle and a search revealed that there was a cycle with the tag of the token No. 663 which was given to the complainant. THE complainant refused to take the cycle claiming that his cycle was a new one. After hearing the parties and perusing the documents produced by them, the District Forum, Pondicherry, by order dated 26.11.92 dismissed the complaint against the Opposite Party No. 2 and directed the Opposite Party No. 1 to pay a sum of Rs. 1300/- towards the loss of bicycle and Rs. 250/- as compensation for inconvenience and hardship and mental agony. Aggrieved by that order, the Opposite Party No. 1 has preferred the present appeal. The specific case of the Opposite Party No. 1 is again that the complainant did not approach him on the day on which he found the cycle missing, that he approached him only two days after and that even at that time the cycle bearing the same tag was still there at the very place where it was parked. No doubt, if the Opposite Party No. 1 has been able to substantiate his case, the complainant would not be entitled to any compensation.

4. THE Opposite Party No. 1 having admitted having taken charge of the bicycle and not having delivered it has the duty to prove his specific plea justifying the non-delivery. He has taken no steps towards that end. Further the version put forth by the Opposite Party No. 1 is against probability. It is hard to believe that the cycle remained idle for two consecutive days in the very place where it was parked without even the first Opposite Party noticing it and placing it in safe custody. On the other hand the complainant has come out with an averment that he lodged a complaint to the Station House Officer, Orieanpet Police Station who sent for the Opposite Party No, 1 and tried to settle the dispute between the parties. If the case as put forth now by the Opposite Party No. 1 was true it was easy for Opposite Party No. 1 to summon the Station House Officer, Orieanpet Police Station to prove that the complainant did not lodge any complaint before the Police Officer. But he failed to do so. Therefore, we do not see any merit what so ever in this appeal, which shall, therefore stand dismissed. No costs. Appeal dismissed.