

Appeal No.
151 of 2018

Sh. Rajiv Agarwal
Vs.
Sh. Devesh Dhauniya & Anr.

19.11.2024

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 25.10.2018
Date of Final Hearing : 07.11.2024
Date of Pronouncement : 19.11.2024

First Appeal No. 151 / 2018

Sh. Rajiv Agarwal
Shri Shyam Mobile Planet
Near Krishna Sah Nursing Home
Nainital Road, Haldwani (District Nainital)
(Through: Sh. Deepak Ahluwalia, Advocate)
.....Appellant

VERSUS

1. Sh. Devesh Dhauniya S/o Sh. Mohan Singh Dhauniya
R/o Gram – Himmatpur Tall
P.O. Haripur Nayak, Kusumkhera
Haldwani, District Nainital
2. Apps Daily Solution Pvt. Ltd.
196/8, 25th Cross, 8th Main Jayanagar 3rd Block
Bangalore, Karnataka
..... None for Respondent Nos. 1 & 2

Coram:

Mr. M.K. Singhal,
Mr. C.M. Singh,

Member (Judicial)
Member

ORDER

(Per: Mr. M.K. Singhal, Member (Judicial):

This appeal under Section 15 of the Consumer Protection Act, 1986 has been directed against judgment and order dated 18.09.2018 passed by the learned District Consumer Disputes Redressal Forum, Nainital (hereinafter

to be referred as the District Commission) in consumer complaint No. 47 of 2017 styled as Sh. Devesh Dhauniya vs. Sh. Rajiv Agarwal & Anr., wherein and whereby the District Commission has allowed the complaint case against the opposite party No. 1.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant purchased a new OPPO F1s model mobile handset from the shop of opposite party No. 1 for a sum of Rs. 17,000/- vide invoice No. 881 on 31.08.2016 and at the time of said purchase, he also got the said mobile handset insured from the opposite party No. 2 through the opposite party No. 1 after paying Rs. 1,749/- as one time insurance premium. On 15.02.2017 the said mobile handset of the complainant got damaged in a motorcycle accident after which he approached the opposite party No. 1 (dealer) who told him to send the said mobile handset to the opposite party No. 2 and the complainant sent the said mobile handset to the opposite party No. 2 and also deposited Rs. 1,500/- as claim processing charges with the opposite party No. 2, but the opposite party No. 2 did not replace the said mobile handset, nor got it repaired. In an email from Apps Daily Insurance Company, it was said that the papers of insurance of the said mobile handset was not completed by the Shree Shyam Mobile Planet – opposite party No. 1, so the above mobile handset is not being changed. Hence, the complainant filed a complaint case before the District Commission, Nainital against the opposite party Nos. 1 & 2 and claimed Rs. 17,000/- as cost of the said mobile handset, Rs. 1,749/- as insurance premium amount, Rs. 1,500/- repairing charges, Rs. 50,000/- as business losses, Rs. 10,000/- as compensation for mental agony and Rs. 15,000/- as fees for sending legal notice as well as for cost of complaint.

3. The opposite party No. 1 has filed his written statement in the District Commission and accepted the para Nos. 1 to 3 of the complaint and alleged

that the complainant voluntarily got insured his mobile handset in question from the opposite party No. 2 and the answering opposite party has not pressurized the complainant for insurance of the said mobile handset. The answering opposite party is not responsible because the said mobile handset was insured with the opposite party No. 2.

4. The opposite party No. 2 – has not filed any written statement before the District Commission, therefore, an ex-parte proceeding was initiated against it in the Commission below.

5. The District Commission after hearing both the parties and after taking into consideration the entire pleadings, facts and material placed on record, passed the impugned judgment and order dated 18.09.2018 whereby the complaint was allowed and the opposite party No. 1 was directed to pay Rs. 17,000/- as compensation of the said damaged mobile handset and Rs. 5,000/- as costs of the complaint to the complainant within one month from the date of above judgment and order.

6. Aggrieved by the aforesaid judgment and order of the District Commission, the opposite party No. 1 has preferred the present appeal as appellant. Learned counsel for the appellant has alleged that the impugned judgment and order is illegal and against the facts and circumstances of the case and the same is bad in the eyes of law. The impugned judgment and order is arbitrarily and is perverse. The District Commission has only relied on the contentions of the respondent No. 1 – complainant and had woefully and pathetically ignored the contents of the written statement filed by the appellant and also the evidence adduced by the appellant before the District Commission. The District Commission erred in passing the award against the appellant as the true facts submitted by the appellant and evidence adduced by the appellant were not taken into consideration. The said facts

and circumstances of the present case were that the respondent No. 1 upon his own sweet-will got the said mobile handset insured with the respondent No. 2 – opposite party No. 2 without any compulsion of the appellant, as such it was only the respondent No. 2 who was supposed to replace / rectify the said mobile handset in case of any damage or loss of the same, but the said damaged mobile handset was neither replaced, nor rectified by the respondent No. 2 and the appellant having no concern with the abovesaid insurance, was not at all responsible for the same. The respondent No. 1 is not the consumer of the appellant, as the insurance contract concerned with the mobile handset in question was between the respondent No. 1 and respondent No. 2; the appellant already paid the amount of mobile insurance kits purchased from the distributor of the said insurance company - respondent No. 2 earlier in advance out of which through one kit, insurance of the said mobile handset of respondent No. 1 was done, meaning thereby that the insurance premium of Rs. 1,749/- which was paid by the respondent No. 1 to the appellant was deposited by the appellant prior to the purchase of the said mobile handset to the said insurance company – respondent No. 2 through its distributor at Haldwani. So in the abovesaid circumstances, the appeal be allowed and the impugned judgment and order dated 18.09.2018 of the District Commission is liable to be set aside.

7. Learned counsel Sh. Deepak Ahluwalia for the appellant has appeared.

8. After service of the notices upon the respondent Nos. 1 & 2, none has appeared before this Commission on behalf of the respondent Nos. 1 & 2, hence vide order dated 25.09.2024, an ex-parte proceeding has been drawn against them.

9. We have heard learned counsel for the appellant and perused the record available before us.

10. On the perusal of the record, it is evident that the appellant has sold a mobile handset in question to the respondent No. 1 for a sum of Rs. 17,000/- and the said mobile handset was insured after paying Rs. 1,749/- as insurance premium. It is also clear that the said mobile handset was got damaged in an accident of respondent No. 1 due to motorcycle on 15.02.2017. In the appeal, the appellant has also alleged that the respondent No. 1 is not the consumer of the appellant.

11. A perusal of the record shows that the appellant has sold the mobile handset in question to the respondent No. 1 for a sum of Rs. 17,000/- vide invoice No. 881 dated 31.08.2016. So it is crystal clear that there is a relation between the appellant and respondent No. 1 as 'consumer' and 'seller' / 'service provider'. Being appellant a retailer / seller of the said mobile handset, it was the duty of the appellant to repair or replace the said damaged mobile handset of the respondent No. 1, for which he was paid insurance premium of Rs. 1,749/-, but he has not done so.

12. So looking to the facts of the case when there was a relation of 'seller' and 'consumer' between the appellant and respondent No. 1, seller is the duty bound to repair or replace the damaged mobile handset, for which he was paid insurance premium.

13. Thus, we are of the considered view that the learned District Commission has exercised the jurisdiction which was vested in it. There is no illegality and irregularity in passing of the impugned judgment and order. Accordingly, we hold that the impugned judgment deserves to be affirmed and the appeal is liable to be dismissed.

14. Accordingly, the appeal is dismissed. Impugned judgment and order dated 18.09.2018 passed by the District Commission, Nainital is hereby affirmed. No order as to costs of the appeal.

15. A copy of this Order be provided to all the party free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the party. A copy of this Order be sent to the concerned District Commission for record and necessary information.

16. File be consigned to record room along with a copy of this Order.

(Mr. M.K. Singhal)
Member (Judicial)

(Mr. C.M. Singh)
Member

Pronounced on: 19.11.2024