

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL  
COMMISSION – I, HYDERABAD

PRESENT

HON'BLE MRS. B. UMA VENKATA SUBBA LAKSHMI, PRESIDENT  
HON'BLE MRS. C. LAKSHMI PRASANNA, MEMBER  
HON'BLE MR. R. NARAYAN REDDY, MEMBER

Wednesday, the 19<sup>th</sup> day of July, 2023

Consumer Case No. 530 of 2022

Between:-

Rajender Khanna S/o. Late ND Khanna  
Aged about: 51 Years, Occ: Practicing Advocate,  
R/o. 23-5-848, Shalibanda,  
Hyderabad. ....Complainant

AND

The General Manager  
Zoom Cars India Private Limited  
Registered Office Address  
Unit Nos. 701 to 717, 7<sup>th</sup> Floor, Tower-B,  
Diamond District, No.150,  
Customer Care: [help@zoomcar.com](mailto:help@zoomcar.com) .....Opposite Party

Counsel for the Complainant : Khanna Law Association  
Counsel for the Opposite Party : M/s.Rajashekar Reddy

O R D E R

(By Hon'ble Mrs. B. Uma Venkata Subba Lakshmi,  
President on behalf of the bench)

1. The present complaint is filed U/s 35 of the Consumer Protection Act, 2019, alleging deficiency of service and unfair trade practice on the part of opposite party, with a prayer which reads as under:
  - (i) Directing the opposite party to issue the written unconditional apology and restore the account with immediate effect;
  - (ii) That opposite party to be severally liable for deficiency of service causing harm to his professional practice through their act of negligence and misleading the complainant causing direct financial loss of expenses incurred in travelling, boarding and lodging and also effecting his professional practice and direct the payment of fees and compensation as mentioned below. The complainant is entitled for reliefs and compensation in form of refund of all expenses incurred in Vijayawada and also the professional charges in the form of appearance fees and

all other such order or reliefs this Hon'ble Forum feels deem fit and proper in interest of justice;

a) Train tickets from Hyderabad to Vijayawada:  
1875/-

b) Train tickets from Vijayawada to Hyderabad:  
2517/-

c) Zoom Car full refund:1609/-

d) Zoom Car petrol:1000/-

e) Hotel at Vijayawada:1600/-

f) Boarding: 2000/-

g) Rs. 50,000/- towards the reimbursement of appearance fees of my client M. Kiran Kumar

h) Further additional exemplary compensation

i) Rs. 1,00,000/- (One Lakh Rupees Only) towards the mental agony caused

j) Rs. 25,000/- towards this notice

Grand Total:1,85,601/- (One Lakh Eighty Five Thousand Six Hundred & One Rupees Only).

2. Brief facts as stated in the complaint are that the complainant is a practicing advocate with the law firm known as 'Khanna Law Associates'. The opposite party is the company registered under Companies Act providing services through on-line application known as 'ZOOM CARS' operating all over India. The customers can book self-driven cars from the opposite party on the mobile application. The complainant, using the mobile application, booked Hyundai i-10 car and the booking, vide booking ID No. JPSN7JANM, was confirmed by the opposite party through SMS. It was stated that the delivery was to be taken in Vijayawada on 08.04.2022 at 10 a.m. and returned at 7 p.m. On-line payment for Rs. 1,609/- (Rupees One Thousand Six Hundred and Nine Only) was done by the complainant. On 08.04.2022, the complainant reached Vijayawada from Hyderabad at 4 a.m. and stayed in a hotel. At 9.04 a.m., the opposite party informed the complainant that the car booked was unavailable. Thereafter, the opposite party had given an option of Alto car and the same was accepted by the complainant. As per the SMS confirmation of the opposite party, the car was supposed to be delivered at 9.33 a.m. at Vijayawada railway station. Since the car was not found at the scheduled time, the complainant contacted the customer care and after repeatedly calling the customer care of the opposite party, the car was actually delivered at 11.20 a.m. and not at 10.30 a.m. as claimed

by the opposite party. It is averred that the complainant was supposed to reach the Hon'ble High Court at Amaravati for the purpose for which he had come to Vijayawada. It is further averred that the case was listed in the cause list for final hearing and disposal. It is stated that the complainant reached at 12 p.m. and was shocked to see that his case was called at 11.30 a.m. and due to non-representation, the case was adjourned to 13.04.2022. It is further stated that due to laxity and unprofessionalism shown by the opposite party, the complainant suffered huge embarrassment from his client and also suffered monetary loss. It is submitted that the opposite party had arbitrarily changed the timing of delivery of Alto car (on the mobile application) from 10 a.m. to 10.30 a.m. and even in the invoice, the timing was altered and manipulated illegally by showing the time of delivery of car at 10.20 a.m. and return of car at 20.01 p.m. It is further submitted that the opposite party had illegally deducted Rs. 228/- (Rupees Two Hundred and Twenty Eight Only) towards the late return charges and had refunded only Rs. 393/- (Rupees Three Hundred and Ninety Three Only). A legal notice dated 18.04.2022 was issued to the opposite party. After receiving the legal notice, the opposite party suspended the account of the complainant to avoid access to the bookings and invoice lodged in the account. Hence, alleging deficiency of service and unfair trade practice on the part of opposite party, the complainant filed the present complaint with a prayer to grant the reliefs as stated supra.

3. In the written version while denying the allegations made in the complaint unless expressly admitted in the written version, it is averred by the opposite party that the company is a self-driver car rental service provider with operations spanning over 45 cities in various states across the country. It is further averred that the vehicle is provided to a 'member' or 'customer' for a fixed duration of time as per their requisition made via online booking on the website or through mobile application. It is stated that the customer has option to select various cars and also the time for delivery of cars and charges will be applicable as per the selected car and time. It is further stated that the opposite party had informed the complainant about the non-availability of the booked car i.e. Hyundai i-10 and was given an option of Alto car. The complainant confirmed the Alto car and the delivery and return timings were also altered from 10 to 10.30 a.m. and 7 to 7.30 p.m.

It is contended that the complainant had given consent for change of car from Hyundai to Alto and also for change in delivery timings from 10 to 10.30 a.m. It is further contended that the deduction charges were levied as the complainant had returned the vehicle at 8.01 p.m. instead of 7.30 p.m. Hence, denying the allegations of deficiency of service on their part, the opposite party prayed the Commission to dismiss the complaint with heavy costs.

4. During the course of enquiry, the complainant (PW-1) filed evidence affidavit and got marked the documents at Ex.A1 to Ex.A12. Despite affording several opportunities to the opposite party (from 28.03.2023 to 02.06.2023), they did not file evidence affidavit, hence right to file evidence affidavit of the opposite party was forfeited vide docket proceedings dated 02.06.2023. Thereafter, the complainant filed written arguments on 19.06.2023 and the matter was reserved for orders on 13.07.2023 (after adjourning the matter from 19.06.2023 to 05.07.2023 and 13.07.2023).
5. Based on the record and written arguments of the complainant, the following points have emerged for consideration:
  - I) Whether the complainant could prove deficiency of service and unfair trade practice on the part of opposite party?
  - II) Whether the complainant is entitled for the reliefs prayed in the complaint? If so, to what extent?
6. Point a:
  - 6.1. Admittedly, the car booked by the complainant was unavailable and the same was intimated to the complainant by the opposite party on 08.04.2022 (Ex.A2). It is not disputed that the amount of Rs. 1,609/- (Rupees One Thousand Six Hundred and Nine Only) was paid by the complainant towards booking advance on 07.04.2022.
  - 6.2. It is evident from Ex.A1 that the opposite party sent message to the complainant stating that the vehicle 'Hyundai i10 MT Petrol' would be delivered at 10 a.m. at Vijayawada railway station on 08.04.2022. It is further evident from Ex.A3 that an amount of Rs. 1,609/- (Rupees One Thousand Six Hundred and Nine Only) was paid through online on 07.04.2022 at 11.20 p.m. to opposite party by the complainant. It is also evident from the 'transport vehicle rental' document at Ex.A4 that the document substantiated the

statement of the complainant that the vehicle 'Maruti Alto MT petrol' drop was mentioned at 10.30 a.m. on the mobile app though he booked the vehicle for 10 a.m. It is clear from the mobile conversation at Ex.12 (pen drive) that although the complainant booked the vehicle at 10 a.m., there was change in the delivery of the vehicle from 10 to 10.30 a.m. in the invoice. Moreover, the vehicle was not delivered at the location (railway station) even at 10.30 a.m. (as per the conversation).

- 6.3. The complainant, in discharge of burden of proof, submitted documentary evidence (Ex.A1 to Ex.A12) to substantiate his averments / pleadings. The opposite party, though filed written version, failed to lead evidence to rebut the evidence of the complainant. Thus, the evidence of the complainant was not rebutted.
- 6.4. In the present case, the complainant was not intimated about the non-availability of the car within reasonable time prior to the scheduled booking delivery time of the rental car, hence, the opposite party was not only deficient in rendering proper service but also indulged in unfair trade practice.
- 6.5. In view of the above said facts and circumstances of the case, the deficiency of service coupled with unfair trade practice by the opposite party is proved. Hence, point 'a' is answered in favour of the complainant.

7. Point No. 'b':

- 7.1. It is a settled principle that pleadings are not evidence and that a party who wants to prove anything as made out in his / her pleadings has to give evidence to prove his / her assertions.
- 7.2. The rule of evidence before the civil proceedings is that the onus would lie on the person who would fail if no evidence is led by the other side. If the complainant is able to discharge the initial onus, the burden would then shift to the opposite party in the complaint.
- 7.3. In the present case, change in the car from Hyundai i-10 to Alto and change in the booking timings of the cab was not denied by the opposite party. Although, it was contended by the opposite party that the complainant had given consent, no cogent documentary evidence was submitted by the opposite party to

substantiate that the complainant had given consent for change in the delivery of car timings from 10 a.m. to 10.30 a.m. Moreover, the complainant had discharged the initial onus of proving that the vehicle was not delivered on time despite confirmation from the opposite party with regard to vehicle rental booking, hence, the burden of proof was shifted to the opposite party. But the opposite party had failed to rebut the evidence of the complainant as the opposite party did not file evidence affidavit after filing written version. Thus, after receiving the advance payment, sending the SMS stating that the car booked was unavailable and also not sending the alternate vehicle at the time promised by the opposite party is nothing but deficiency in rendering proper service by the opposite party.

7.4. The consequential trouble and travail, loss and injury are self-evident. Hence, we are of the considered view that the complainant is entitled for reasonable compensation for the mental agony and consequential trouble / loss caused to him.

7.5. As per the written apology relief (i), the opposite party, at the time of sending the SMS with regard to non-availability of the Hyundai i-10 car, sent apologies to the complainant.

7.6. In the result, the complaint is allowed in part and the opposite party is directed to

- (i) Restore the account with immediate effect;
- (ii) Refund the amount of late return charges of Rs. 228/- levied by the opposite party (as the Alto car was not delivered at 10.30 a.m.);
- (iii) Pay an amount of Rs. 10,000/- (Rupees Ten Thousand Only) towards compensation for the mental agony caused to the complainant;
- (iv) Pay an amount of Rs. 5,000/- (Rupees Five Thousand Only) towards costs.

Time for compliance: 45 days from the date of receipt of the order. In case of non-compliance, the amount mentioned under Sr. No. (i) & (ii) shall attract an interest @6% p.a. from the date of the order to till its actual payment.

Dictated to steno, transcribed and typed by him, pronounced by us on this the 19<sup>th</sup> day of July, 2023.

MEMBER

MEMBER

PRESIDENT

APPENDIX OF EVIDENCE

WITNESS EXAMINED FOR THE COMPLAINANT:

Rajender Khanna S/o. Late ND Khanna Complainant (PW1)

WITNESS EXAMINED FOR THE OPPOSITE PARTY:

Ravichandra SB S/o. Bhojendra Reddy S Rep. by the Deputy Manager for the Opposite Party Zoomear India Private Limited (DW1)

EXHIBITS FILED ON BEHALF OF THE COMPLAINANT:

- Ex.A1 Copy of email dated: 14.04.2022 to [help@zoomcar.com](mailto:help@zoomcar.com) – E proof.
- Ex.A2 Copy of SMS PDF dated; 08.04.2022 – E-Proof.
- Ex.A3 Copy of payment to Zoom Car 1609/- towards Rental-E-Receipt.
- Ex.A4 Copy of Email invoice dated: 08.04.2022-E-Proof.
- Ex.A5 Copy of Legal Notice dated:18.04.2022 along with original receipt.
- Ex.A6 Copy of proof of legal notice registered post.
- Ex.A7 Copy of train tickets dated: 07.04.2022 from Hyderabad to Vijaywada – E TKT.
- Ex.A8 Copy of Train Tickets dated: 08.04.2022 from Vijayawada to Hyderabad – ETKT.
- Ex.A9 Copy of case status from the High Court of Andhra Pradesh.
- Ex.A10 Copy of ICICI Bank Statements.
- Ex.A11 Copy of Text Messages of Confirmation and cancellation of the Zoom Ride.
- Ex.A12 Pen drive.

EXHIBITS FILED ON BEHALF OF THE OPPOSITE PARTY

NIL

MEMBER

MEMBER

PRESIDENT

Read by:-  
Compared by :-  
DSK