

CC/321/2023

Date of filing: 07.10.2023
Date of Disposal: 04.06.2024

**BEFORE THE BANGALORE URBAN II ADDITIONAL
DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
SHANTHINAGAR, BANGALORE - 560027**

DATED THIS THE 04th DAY OF JUNE 2024

CONSUMER COMPLAINT NO.321/2023

PRESENT:

SRI VIJAYKUMAR.M.PAWALE, B.A., LL.B., (Spl).. ... PRESIDENT
SMT.V.ANURADHA, B.A., LL.B., ... MEMBER
KUM.RENUKADEVI DESHPANDE, B.Com., LL.B., (Spl).. ... MEMBER

COMPLAINANT:

Mr.Mukesh.M.,
Aged about 43 years,
Son of Mr.Muthu.K.,
Residing at No.38, 3rd Main Road,
Bharathi Layout, DRC Post,
Bengaluru - 560 029.

(Represented by Mr.George Joseph, Advocate)

V/s

OPPOSITE PARTY:

The General Manager,
Street 1522,
Carmelaram Road, Carmelaram,
Hadosiddapura, Chikkakannalli,
Near RGA Tech Park,
Bengaluru - 560 035.

(OP is Ex-Parte)

=====

3
4/6

By SRI.VIJAYKUMAR.M.PAWALE, PRESIDENT:

//JUDGMENT//

1. This is a complaint filed by the complainant under Section 35 of the Consumer Protection Act, 2019 against the opposite party (herein after referred to as OP) seeking order directing OP to pay Rs.2,86,341/- as compensation towards damage suffered due to negligent act of OP and to pay Rs.1,00,000/- as compensation towards mental agony suffered and cost of the litigation and also to grant such other equitable remedies as this Commission deems fit.
2. The facts averred in the complaint in brief are as under:

OP is a well-known restaurant offering a wide variety of food options, extensive outdoor and indoor seating facility and valet parking.
3. The complainant is the registered owner of vehicle bearing No.KA05MX4321 (TATA NEXON ZX+Car) has purchased on 11.05.2018. The complainant along with his family and friends visited OP restaurant on 04.09.2022 at about 8.30 P.M and had availed OP's service. When the complainant reached OP's

Qy/b

restaurant premises, OP's staff asked complainant's Car key for its valet parking and the complainant had handed over the key to the staff. At around 10.30 PM after completing dinner, the complainant came to the reception and handed over the slip of valet parking for the delivery of his Car. It was raining and the complainant had waited there more than an hour for the delivery of the Car. At around 11.30 PM the representative of the valet parking came and informed the complainant that the vehicle had stalled in the middle of the road since rain water entered into the Car including engine portion. Complainant immediately reached near the Car and inspected it and the complainant found that the Car was damaged due to improper parking and negligent driving through the water. The staff of the OP committed serious negligence in opening the door of the car, while the water stagnation was till the mirror level of the Car and the staff tried to drive the same through the water stagnation, damaging the engine of the Car. Therefore, the complainant suffered huge loss due to the negligent actions of staff of OP.

4. Further, in the complaint it is stated that the complainant made enquiry about the parking place,

Q
4/6

and it was understood that the OP had parked the Car under nearby flyover which is not suitable for vehicle parking. The OP and its staff defrauded the complainant while parking Car in an improper way and place with the pretext that it was a valet parking provided by the OP.

5. Further, in the complaint it is stated that the OP and its staff admitted their negligence then itself and assured that the difference amount of the actual loss and the damages granted by the Insurance Company will be given to the complainant. The Insurance Company had assessed the vehicle as totally damaged, and it was further assessed that Rs.9,45,341/- is the actual damage and insurance company granted an amount of Rs.6,94,000/- to the complainant as damages. **An amount of Rs.2,51,341/- being the differential amount is due to the complainant by the OP as damages.** The OP assured to the complainant that it shall make good the loss that the complainant suffered. The complainant made several communications over phone and email to the OP for payment of damages suffered but the OP did not pay anything as offered.

Q 4/6

6. Further, in the complaint it is stated that **the complainant had spent additional costs of Rs.5,000/- towards towing charges and Rs.15,000/- towards insurance claims handling charges and Rs.15,000/- towards repair estimation charges.** The complainant served legal notice dated 14.03.2023 demanding the damage sustained by the complainant due to the negligent act of the OP within 15 days of the receipt of the said notice. The notice was received by OP on 24.03.2023, but the OP has not bothered to make payment of the damages claimed therein to the complainant within the stipulated time. Hence, the complainant has filed the present complaint against OP as prayed in the complaint.
7. After registering the complainant's complaint, notice was issued to the OP. Though the notice of the complainant's complaint issued by this Commission served upon OP, but OP did not appear before this Commission and hence OP is placed Ex-parte.
8. To prove his case, the complainant has filed affidavit evidence and got marked documents Ex.P1 to P14. Heard oral arguments from Advocate for the

4/6

complainant. We have perused the entire records including citation submitted by the Advocate for the complainant i.e., case reported in (2020) 2 Supreme Court Cases 224 (Taj Mahal Hotel vs. United India Insurance Company Limited and Others).

9. The points that arise for our consideration and determination are as under:

1. Whether the complainant proves that there is a deficiency of service on the part of the OP?

2. What order?

10. Answers to the above said points are as under;

POINT NO.1: In the Affirmative;

POINT NO.2: As per final order for the following;

REASONS

11. **POINT NO.1:-** The complainant to substantiate his case filed affidavit evidence wherein he stated more or less as stated in the complaint and produced 14 documents which are marked as Ex.P1 to P14.

12. At the outset, it is to be noted that the OP by remaining absent before this Commission even after service of complainant's complaint notice served

Q. 11b.

upon him have impliedly admitted the complainant's case. Furthermore, the complainant's case is also corroborated by documentary evidence Ex.P1 to P14 which are admittedly remained unchallenged.

- 13.** Ex.P1 is the copy of the compliant dated 07.09.2022 submitted to PSI of Bellandur Police Station, Bengaluru which corroborates the fact that the complainant had visited the OP's restaurant along with his family members on 04.09.2022 during at around 8.30 pm in his Car bearing Reg. No.KA 05 MX 4321 and complainant has handed over the key of the said Car to valet parking attendant of OP and who had given valet parking slip to the complainant and said Car was damaged due to the negligent act of the OP's staff and OP's concerned where assured to the complainant to give expenses for repair of the Car and subsequently assured to give differential amount which remains after payment by insurance company of the Car. Ex.P2 is copy of e-mail dated 06.09.2022 sent to complainant by OP intimating to the complainant that OP will pay part of the costs, if there is any gap between the claims and costs. Ex.P3 is the copies of photographs of the complainant's Car. Ex.P4 is copy of Legal Notice dated 14.03.2023 sent

Q. 4/16

to OP. Ex.P5 & P6 is postal receipt and acknowledgment. Ex.P7 is the copy of e-mail dated 07.10.2023 sent by OP by way of reply to legal notice Ex.P4 wherein it is stated that OP is ready to pay part of the costs, if there is any gap between the claims and costs of repair of the Car. Ex.P8 is the copy of the Repair Estimate furnished by Adishakti Cars-TATA Motors Service Centre which shows that estimated cost for repair of the complainant's Car was Rs.9,45,341/-. Ex.P9 is copy of Remittance Advice which show that Rs.2,69,000/- given to complainant by Insurance Company & Ex.P10 is the copy of cheque dated 03.10.2023 for Rs.4,25,000/- in favour of IndusInd Bank for making payment to complainant through RTGS. Ex.P9 & P10 discloses that amount of Rs.6,94,000/- is paid by Insurance Company to the complainant. Ex.P11 is copy smart R.C. of the complainant's Car. Ex.P12 is the copy of Final Survey Report pertaining to the complainant's Car. Ex.P13 & P14 discloses that the complainant has spent Rs.30,030/- towards towing charges and insurance claim handling charges etc.

14. In a case reported in (2020) 2 Supreme Court Cases 224 (Taj Mahal Hotel vs. United India

Q/
n/6

Insurance Company Limited and Others) which is relied on by Advocate for complainant, Hon'ble Supreme Court held as under:

“Consumer Protection - Services - Entertainment, Leisure, Tourism and Sports Services - Liability of hotels for theft or loss of vehicles of guests-Prima facie liability rule i.e., wherein innkeeper is presumed to be liable for loss or damage to vehicle of his guest, but can exclude his liability by proving that loss did not occur due to any fault or negligence on his part, as opposed to Common law rule/strict liability rule wherein innkeeper is treated as an insurer and made responsible regardless of presence or absence of negligence on his part - Applicability of

_ Held, hotel-owner cannot contract out of liability for its negligence or that of its servants in respect of a vehicle of its guest in any circumstances and once possession of vehicle is handed to hotel staff or valet, there is an implied contractual obligation to return vehicle in a safe condition upon direction of owner - However, it would not be proper to impose a standard of strict liability upon hotel owners i.e., hotel cannot be made strictly liable for safety of vehicles, in all situations without proof of negligence on its part - Thus, held, in cases where

Q
4/6

such a bailment relationship is found to exist between hotel and its guest, prima facie liability rule should be applied in respect of vehicles so bailed to the hotel – Contract Act, 1872-Ss.148 to 154 – Tort Law – Negligence – Non-derogable duties – Contract and Specific Relief-Specific Contracts – Bailment – Bailee's Rights and Liabilities – Entertainment, Amusement, Leisure and Sports – Facilities / Safety / Accidents / Occupier's Liability / Negligence.

C. Contract and Specific Relief – Contract Act, 1872 – Ss.148 to 154 – Existence of bailment relationship between a guest who parks his vehicle in the hotel and hotel – Degree of control exercised by prospective bailee over property – Relevance of , for determining existence of such relationship-Giving of custody or possession of vehicle and mere parking of the vehicle in a parking space or facility – Distinguished between – Held, the laws of bailment apply where custody or possession of the vehicle is purposefully handed over to the hotel (as is the case with valet parking) – However, but where a person is merely allowed to park his car in a parking space or facility, there is only a licensor – licensee relationship and laws of bailment/prima facie liability rule cannot be applied.

Q 4/16

- Held, in a situation where hotel actively undertakes to park vehicle for the owner, keep it in safe custody and return it upon presentation of a parking slip in a manner such that parking of vehicle is beyond control of the owner, a contract of bailment exists - Thus, hotel would be liable as a bailee for returning vehicle in the condition in which it was delivered”.

15. So, looking to facts and circumstances of the complainant's case and evidence on record which has not been denied by OP by providing contrary evidence by remaining Exparte and also the principles stated in the above referred decision, we are of the considered opinion that there is a deficiency of service on the part of the OP since OP has not paid the amount to the complainant which OP was assured to pay him. Hence, point No.1 is answered in the affirmative.

16. **POINT NO.2:** The complainant has sought relief stating that OP be directed to pay Rs.2,86,341/- and Rs.1,00,000/- towards compensation towards the damages suffered, mental agony and cost of litigation. However, looking to facts and circumstances of the case it appears that

Q
4/6

seeking compensation of Rs.1,00,000/- by the complainant from OP towards mental agony is exorbitant and baseless. Hence, we are of the considered view that it would meet ends of justice if OP is directed to pay Rs.2,86,341/- along with interest @ 6% p.a. from the date of receipt of legal notice i.e., 24.03.2023 till realization and Rs.10,000/- towards mental agony and cost of litigation to the complainant. In view of answer on point No.1 and for the foregoing reasons the complainant's complaint has to be allowed partly. In the result, we proceed to pass the following:

ORDER

The complainant's complaint filed under Section 35 of the Consumer Protection Act, 2019 is partly allowed.

OP is directed to Rs.2,86,341/- (Rupees Two Lakhs Eighty Six Thousand Three Hundred Forty One only) to the complainant along with interest @ 6% p.a. from the date of receipt of legal notice i.e., 24.03.2023 till realization.

Further, OP is also directed to pay Rs.10,000/- (Rupees Ten Thousand only)

Aulb

Date of filing: 07.10.2023
Date of Disposal: 04.06.2024

towards mental agony and cost of litigation to the complainant.

OP shall comply with the above said order within 45 days from the date of this order, failing which OP shall pay interest @ 12% p.a. on amount of Rs.2,86,341/- (Rupees Two Lakhs Eighty Six Thousand Three Hundred Forty One only) to the complainant till realization.

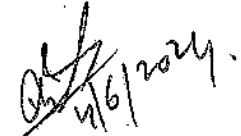
Supply free copy of this order to both parties.

Return spare copies of the pleading and evidence to the complainant.

(Dictated to the Stenographer, typed by her directly on computer, and then corrected, signed and then pronounced by the open Commission on this the 04th day of JUNE, 2024).


(RENUKADEVI DESHPANDE)
MEMBER


(V. ANURADHA)
MEMBER


(VIJAYKUMAR.M.PAWALE)
PRESIDENT

//ANNEXURE//

Witness examined for the complainant's side:

Mr.Mukesh.M, who being the complainant has filed his affidavit.

List of documents filed by the complainant:

1. Ex.P1: Copy of the complaint before the police dated 07.09.2022,
2. Ex.P2: Copy of the e-mail,
3. Ex.P3: Photographs of the car,
4. Ex.P4: Copy of the Legal Notice dated 14.03.2023,
5. Ex.P5& P6: Postal Receipt & Acknowledgement,
6. Ex.P7: Copy of the e-mail,
7. Ex.P8: Copy of the Repair Estimate,
8. Ex.P9: Copy of Remittance Advice,
9. Ex.P10: Copy of the cheque dated 03.10.2022,
10. Ex.P11: Copy of Certificate of Registration,
11. Ex.P12: Copy of (Final) Survey Report,
12. Ex.P13: Copy of Tax Invoice 30.09.2022,
13. Ex.P14: Copy of Invoice No.23092022


Witness examined on behalf of the Opposite Party:

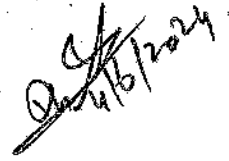
-NIL-

List of documents filed by the Opposite Party:

-NIL-


(RENUKADEVI DESHPANDE)
MEMBER


(V. ANURADHA)
MEMBER


(VIJAYKUMAR.M.PAWALE)
PRESIDENT