

Date of Filing in Chennai (South): 19/10/2022

Date of Order : 15/05/2024

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
TIRUVANNAMALAI

PRESENT: THIRU. K. GANESAN, M.L.,

PRESIDENT

TMT. R. VIJAYA, B.Sc., M.A., M.L.,

MEMBER-II

C .C.No. 16/2024

(C.C.No.375/2022 on the file of DCDRC, Chennai South)

WEDNESDAY, THE 15th DAY OF MAY, 2024

Mr. S. Diwakar,
S/o. K. Sankar,
No. 48, Eldams Road,
Alwarpet, Chennai - 600 018.

... Complainant

..Vs..

Zoomcar India Private Ltd.,
7th Floor, Tower B, Diamond District,
150, HAL Airport Road,
Kodihalli, Bangalore 560 008.

And also at

Steeple Reach, Tower B, 2nd Floor,
Cathedral Road, Gopalapuram,
Chennai 600 086.

... Opposite Party

Counsel for the Complainant
Counsel for the Opposite Party

: M/s. Rajesh Ramanathan
: M/s. M. Muthuseran

This complaint has been originally filed before the DCDRC, Chennai South on 13/10/2022 and taken on file as C.C.No.375/2022 on 19/10/2022 and subsequently transferred to this Commission as per the State Commission's Official Memorandum in Rc.J1/3145/2023 dated 03/01/2024 and renumbered as C.C.No.16/2024.

The opposite party did not submit his oral argument. On perusal of the records on both sides and written argument on both sides and upon hearing the oral argument on complainant side, this Commission delivered the following:

ORDER

BY TMT. R. VIJAYA, B.Sc., M.A., M.L., MEMBER- II

1. This complaint has been filed by the complainant u/s.35 of the Consumer Protection Act, 2019 to direct the opposite party to pay compensation of Rs.5,00,000/- towards deficiency of service and damages for mental agony and hardship caused to the complainant due to deficient service and to pay the cost of the proceedings.

2. COMPLAINT IN BRIEF :

The complaint of the complainant is that he had planned a vacation to Ooty from 12/08/2022 to 15/08/2022 and he made a booking of self-driven Triber MT Petrol with vehicle number TN 88 H 2143 on 30/07/2022 vide booking ID JPSN7DL7P through www.zoomcar.com by making a total payment of Rs.10,749/-. The said booking of the car was from 11 a.m. on 12/08/2022 to 15/08/2022 3 p.m., as specified by the opposite party. The complainant was informed that the owner of the vehicle was mentioned to be Rajesh Kanna S. The complainant on 12/08/2022 reached Coimbatore International Airport and contacted the designated provided by the opposite party and identified the vehicle. The complainant carried out the exterior checklist as provided by the opposite party, whereby complainant took photographs of the exterior and the seating area of the vehicle. While checking the exterior of the vehicle, the complainant was notified through the opposite party's checklist that the driver side wheel hub was damaged, the same

was not brought to the complainant's notice by the opposite party ever before. Thereafter, the complainant drove the vehicle to the nearest fuel station and filled the vehicle tank with 27 litres of petrol for a sum of about Rs.2,750/- and reached Ooty on the same day. At around 6.30 p.m. while the complainant attempted to park the car near a restaurant, the steering wheel was suddenly non-responsive, the complainant was shocked to find that the tie rod of the driver side wheel was completely severed thus making the car unable to move. The complainant made several attempts to contact the roadside assistance number of the opposite party, however the customer care executive was only interested in the safety of the vehicle and the complainant's request seeking a replacement car or immediate assistance to salvage the booked vehicle were unanswered. On 12/08/2022 at about 8.30 p.m. the car was remotely locked by opposite party and the complainant and his family were left on the road, the complainant had to scramble to find an alternative and ended up spending exorbitant amount of money for their last-minute booking of private taxi service for the remainder of his stay at Ooty and for the drive back to the airport at Coimbatore for the return journey. The complainant had used the car only for about 7 hours of the entire 76 hours booked.

On 13/08/2022, the complainant was informed that the vehicle has been towed from the place where the complainant had parked the vehicle and was remotely locked up by the opposite party. Despite several emails sent by the complainant requesting the opposite party to close the booking and refund the payment, the booking was kept alive till 18/08/2022, though the vehicle was in the custody of the opposite party. The complainant's repeated emails and calls were unattended and unanswered by the opposite party's executives. The opposite party's ignorance of the complainant's

predicament and total apathy towards the safety of complainant and his family, patently showed lack of any commitment on the opposite party part towards its customers including their safety.

The complainant on 15/08/2022 at about 3.05 p.m i.e., after the designated drop off time for the vehicle, received email from one Mr. Abhijeet Joshi informing that the vehicle is under inspection, once the validation is done, the booking ID will be closed. The complainant replied there to vide email dated 17/08/2022 that the ticket should not be closed as his complaint was not resolved at all. Thereafter no communications from the opposite party to the complainant, on 18/08/2022 at about 3.15 p.m. the booking was closed and was not demanded of any additional payment for alleged “ extra hours of driving” as mentioned in the booking page. This clearly shows the opposite party is duplicitous and are involved in a huge scam to defraud its customer. On 19/08/2022, the complainant issued a legal notice to the opposite party alleging deficiency in service and demanding refund of payment. On 26/08/2022, the opposite party issued a formal reply seeking the complainant to furnish the Booking ID for transaction. On 30/08/2022, the opposite party contacted the complainant for settlement and inspite of the complainant's refusal, the opposite party proceeded to unilaterally credited a sum of Rs.11,344/- to the complainant's bank account. The complainant stated that he had issued a rejoinder highlighting the clandestine activities of the opposite party and demanding their compliance to the complainant's legal notice. In spite of receipt of the legal notice and rejoinder the opposite party failed to reply and comply the complainant's demand. Hence this complaint.

3. THE CONTENTION OF THE WRITTEN VERSION FILED BY THE OPPOSITE PARTY IS AS FOLLOWS:-

On behalf of the opposite party Mr. Ravichandra S B, the authorized officer / signatory filed Written Version and at the outset denied all the allegations contained in the complaint except those that are specifically admitted and put the complainant to strict proof of the same and stated that the complaint is not maintainable in law or on facts, it is only after thought and the complainant is trying to evade the liabilities to the opposite party. The opposite party submitted that the complainant failed to implead the necessary party the owner of the car. As per the norms and rules, of regulation of the opposite party Company, the own board vehicle owner having the responsibility of the regular service, wheels in good condition to maintain himself to attach the vehicle and give the vehicle to Zoom Car's travels. The opposite party stated that the complainant booked the car TN 88 H 2143 "TRIBER Vehicle" on 12/08/2022 at 11.00 a.m to 15/08/2022 at 3.00 p.m estimated cost of Rs.10,649/- payment made on 30/07/2022 for the booking ID No. JPSN7DL7P. At the time of booking and delivery, the vehicle was in good condition including the wheel condition "Due to improper manner of driving only the steering wheel may be got non-response", hence the complainant is solely responsible for the car steering non-response and wheel damage. The opposite party submitted that as per norms of their refund process, within 5-15 days, on 30/08/2022 for a sum of Rs.11,344/- was refunded to the complainant's, further the complainant failed to prove the petrol charges of Rs.2,750/-. The opposite party running his Company with rules and regulations and conditions to deliver for his own driving with rental charges, the opposite party was not taken any caution deposit of the vehicle involved in any

accident or damages taking advantage of the same filed this complaint with the intention to grab money further the opposite party stated that the complainant accepts and agreed that he properly click list the vehicle itself at the time of booking and delivery. Hence which is very clear that at the time of booking and delivery the car was delivered to the complainant in good condition but the complainant drove the vehicle in the hill station improperly caused heavy loss and damages to the owner of the car. The opposite party submitted that the opposite party properly address the email communication with the complainant as per refused process the complainant's payment was also refunded as per norms. The opposite party is not at all liable for any payment, damages and compensation to the complainant and prayed to dismiss the false baseless complaint.

4. The complainant filed his proof affidavit and Exh.A.1 to Exh.A.9 were marked on the complainant's side. Mr. Ravichandra S B , the authorized officer / signatory filed proof affidavit on the opposite party's side and Exh. B.1 to B2 were marked.

5. Heard the complainant.

6. Points for consideration:

- 1) Whether there is any deficiency of service on the part of the opposite party?
- 2) Whether the complaint is bad in law for non joinder of necessary party, the owner of the vehicle rented to the complainant?

3) Whether the complainant is entitled to receive Rs.5,00,000/- towards the deficiency of service and damages, for mental agony and hardship caused to the complainant due to deficient service?

4) To what other relief the complainant is entitled for?

7. Point No.1

The complainant had reiterated the facts of the complaint in his affidavit of evidence that the complainant planned a vacation to Ooty from 12/08/2022 to 15/08/2022, he booked self-driven TRIBER MT Petrol with vehicle number TN 88 H 2143 on 30/07/2022 vide booking ID JPSN7DL7P through www.zoomcar.com by making a total payment of Rs.10,749/- was marked as Exh.A1 based on various promises like safety of the vehicle, immediate road side assistance, well-maintained fleet of vehicles, hassle free scheduling and payment policies. It was informed to the complainant that the car had been driven for about 44,000 k.ms., and the owner of the vehicle was mentioned to be Rajesh Khanna S by the opposite party believing the opposite party, picked up the vehicle of the opposite party at 11 a.m on 12/08/2022 and to be returned at a designated place as specified by the opposite party i.e., at Peelamedu, Coimbatore at or before the designated time (3 p.m on 15/08/2022). The complainant was allowed to drive the car without any additional charges for a total distance of 76,000 k.ms., for the total booking duration of 76 hours. The booking confirmation issued by the opposite party was marked as Exh.A1. The complainant submitted that on 12/08/2022 i.e., the date of pickup between 6.30 a.m to 7.30 a.m received 5 mails from the opposite party advising various aspects of safe-driving, on

how to start a car, how to pick up and drop the car etc., were marked as Exh.A2. The complainant on 12/08/2022 at about 10.50 a.m after identifying the vehicle, carried out the exterior checklist as provided by the opposite party, whereby took photographs of the exterior and the seating area of the vehicle those photographs were marked as Exh.A3. The complainant submitted that while checking the exterior of the vehicle, noticed through the opposite party's checklist that the driver side wheel hub was damaged. This was never brought to the notice of complainant by the opposite party that day ever before, at the time of booking vehicle. The complainant drove the vehicle and filled 27 liters of petrol for a sum of about Rs.2,750/- and proceeded to travel to Ooty with the complainant's family members, on reaching the Ooty the complainant drove the car within the town on the same day i.e., 12/08/2022. At about 6.30 p.m while the complainant attempted to park the car near a restaurant, the steering wheel was not responding and unable to move the car. When the complainant checked the vehicle, the complainant shocked that the tie rod of the driver side wheel was completely severed. Both front wheels were facing at odd and impossible angles, the complainant immediately contacted the roadside assistance number provided by the opposite party, the photographs of the defective vehicle were marked as Exh.A4. The opposite party's customer care executive was very rude, abusive and apathetic to the complainant's predicament only asked about the vehicle was properly parked to avoid it being towed by police at about 8.30 p.m on 12/08/2022 the car was remotely locked by opposite party and the complainant and his family including two children were left on the road. On 13/08/2022 the complainant was informed that the vehicle has been towed from the place where it was remotely locked by the opposite party which conclusively proved that

the car was completely under opposite party's possession and control, while so, the complainant's booking was kept alive and running until 18/08/2022. The complainant had sent several emails to the opposite party requesting to close the booking and refund the payment of the complainant, the emails were marked as Exh.A5. The complainant had filed the screenshots as Exh.A6 of those shows the endless time spent with the opposite party in seeking help, the number of days the booking was deliberately kept open, though the complainant did not had possession and control over the car. On 15/08/2022 at about 3.05 p.m. i.e., after the designated drop off time of the vehicle, one Mr. Abhijeet Joshi informed the complainant that once validation is done, the booking ID will be closed. Thereafter through email the complainant was informed that the ticket has been resolved. On 17/08/2022 email the complainant informed the opposite party not to close the complaint, finally on 18/08/2022 at about 3.15 p.m booking was closed and not demanded any additional payment for alleged "extra hours of driving". The complainant issued a legal notice to the opposite party dated 19/08/2022 marked as Exh.A7 regarding the faulty / defective car, refund of the booking amount and compensation for mental agony caused due to the opposite party's deficient service. On 26/08/2022 the opposite party issued a reply notice to the complainant requesting to provide booking ID for the transaction, marked as Exh.A8. Subsequently the opposite party had unilaterally credited a sum of Rs.11,344/- into the complainant's bank account. On 03/09/2022 the complainant issued Rejoinder marked as Exh.A9, the opposite party failed to issue any reply on merits to the complainant and the complainant filed his written submission along with the citation and prayed for

compensation of Rs.5,00,000/- towards the deficiency of service, damages for mental agony and hardship caused to the complainant and the cost of the proceeding.

8. Per contra, the opposite party not denied the complainant booking of the car TN 88 H 2143 "TRIBER Vehicle" on 12/08/2022 at 11.00 a.m to 15/08/2022 at 3.00 p.m vide booking ID JPSN7DL7P and estimated cost of Rs.10,649/- was paid by the complainant on 30/07/2022. The opposite party submitted that at the time of booking and delivery the vehicle was in good condition including the wheel condition and stated that it is the responsibility of the customer to check the vehicle condition and to fill the form as per the protocol of zoomcar, if in case the customer found that the vehicle is not in driving condition then the customer has to mark the deficiency in the check list and if the damages are serious in nature, the opposite party stated that they will arrange an alternate vehicle to the customer in a minimal time. And as per this it clearly shows that the problem in the vehicle happened "Due to improper manner of driving" and due to the rash and improper driving the vehicle wheel got damaged and the wheel got struck and unable to rotate". Hence the complainant is solely responsible for the car steering non-response and wheel damage due to lack of driving skills or improper and reckless driving and marked the Exh.B1 the booking ID of the complainant. Further the opposite party stated that as per their norms of contract for the refund will be processed within 5-15 days of the cancellation of the booking or completion of the booking, was refunded to the complainant on 30/08/2022 for a sum of Rs.11,344/- and the complainant failed to prove the petrol charges of Rs.2,750/- filled the car tank. The opposite party also stated that as per the Laws of India, the Company is running. Meanwhile, the opposite party was not taken any caution deposit of the vehicle involved

in any accident or damage taking this as advantage in order to grab money and damage the reputation of zoomcar the complainant filed this complaint. The opposite party further stated that the complainant accepted and agreed that he properly verified the vehicle at the time of taking possession and filled the checklist. Hence it is very clear that at the time of booking and delivery, the car was delivered in good condition but the complainant's improper and irresponsible driving caused the opposite party and the owner of the car to face heavy loss and damages, further stated that the opposite party is not at all liable for any damages, payment and compensation to the complainant and prayed for dismissal of the false baseless complaint. The opposite party filed the authorization letter marked as Exh.B2.

9. On considering the above submission of the complainant and the opposite party's Written Argument this Commission on perusal of the documents, records and the oral argument of the complainant that the complainant had planned a vacation to Ooty from 12/08/2022 to 15/08/2022 and booked self driven car "TRIBER MT" Petrol with vehicle number TN 88 H 2143 on 30/07/2022 vide booking ID JPSN7DL7P through www.zoomcar.com by making a total payment of Rs.10,749/- this was not denied by the opposite party further the complainant was informed that the owner of the vehicle is one Rajeesh Kanna S. when the complainant reached the Coimbatore International Airport contacted the opposite party and identified the vehicle. The complainant carried out the exterior checklist as provided by the opposite party whereby complainant took photographs of the exterior and the seating area of the vehicle. While checking the exterior of the vehicle, the complainant was notified that the driver side wheel hub was damaged this was not informed by the opposite party to the complainant

in checklist. The complainant drove the vehicle to the nearest fuel station and the complainant stated that he had filled the 27 litres of petrol in the car fuel tank for a sum of about Rs.2,750/- and reached Ooty on the same day, at about 6.30 p.m. when the complainant attempted to park the car near a restaurant, the steering wheel was suddenly non-responsive. The complainant was shocked and found that the tie rod of the driver side wheel was completely severed which made the car unable to move. Immediately the complainant contacted the roadside assistant number of the opposite party, however, the customer executive only interested in the safety of the vehicle and the complainant's request for replacement of car as per their words not answered. At about 8.30 p.m. on 12/08/2022 the opposite party locked the car by remote and not helped the complainant alternatively by providing car to the complainant. This was not denied by the opposite party that the opposite party having received the complaint from the complainant during night time not came forward to help the complainant as per their contract, not even taken any steps to provide any help to the complainant. The opposite party after the thorough investigation would have tried to recover the amount from the complainant. Even after that the opposite party have not responded the complainant's request for refund of booking amount kept the booking as if the car is in possession of the complainant, to substantiate the same the complainant had filed email correspondence Exh.A2 and Exh.A5 and the photographs of the defective vehicle Exh.A3 and Exh.A4 were marked on the complainant side, the Exh.A6 the screenshots of booking page of the opposite party marked by the complainant clearly shows the callous attitude of the opposite party towards its customer amounts to deficiency in service on the part of the opposite party. Further while considering the opposite party's

written submission it is only to evade the litigation proceeding the opposite party without any amicable talks with the complainant credited the amounts of the booking, a sum of Rs.11,344/- into the complainant account, further the opposite party not responded for any emails of the complainant which clearly establishes the complainant's grievances. The reasons stated by the opposite party is not substantiated with any documentary evidences. After considering the citation filed on behalf of the complainant this Commission comes to the conclusion that the opposite party has committed service deficiency to the complainant. Hence there is a deficiency of service on the part of the opposite party. This Point No.1 is answered accordingly.

10. Point No. 2

In Point No.2, the opposite party had raised the objection of non - joinder of necessary party i.e., the owner of the vehicle rented to the complainant by the opposite party while deciding, it is pertinent to state that ever before the complainant was informed by the opposite party that incase of any defect in the vehicle the owner also responsible to answer the complainant, and no rental contract between the owner of the car and the complainant in such case the objection of the opposite party that the complaint is bad in law for non-joinder of necessary party, is not inclined to be accepted by this Commission. Hence this Point No.2 is answered accordingly.

11. Point Nos. 3 & 4

The complainant had sufficiently proved the complaint with documents and this Commission in Point No.1 held that there is a deficiency on the part of the opposite party for the service rendered to the complainant. Hence the complainant is entitle for

the compensation and cost to the proceeding. Further the compensation should be commensurate with mental agony suffered by the complainant and it is required to be fair, just and not unreasonable and arbitrary. At the cost of the service provider, this Commission should not enrich the complainant by awarding unfair, unreasonable and highly excessive compensation. Hence this Commission holds that awarding of Rs.50,000/- towards compensation for the mental agony suffered by the complainant along with his family during the night time will be sufficient in this case. These Point Nos. 3 & 4 are answered accordingly.

In the result, this complaint is partly allowed. The opposite party is directed to pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards the compensation for deficiency and mental agony suffered by the complainant and also to pay a sum of Rs.5,000/- (Rupees Five Thousand only) towards cost, to the complainant within two months from the date of this order, failing which, the complainant is entitled to recover the above amount with interest at the rate of 6% per annum from the date of this order till the date of realization.

Hand written by the Member - II, computerized by the Steno-typist and corrected by the Member – II and pronounced by us in Open Commission on this the 15th day of May 2024.

**Sd/-
R. VIJAYA
MEMBER-II**

**Sd/-
K. GANESAN
PRESIDENT**

DOCUMENTS FILED ON THE SIDE OF THE COMPLAINANT:

Exh.A.1	30/07/2022	Copy of booking confirmation issued by opposite party along with payment confirmation
Exh.A.2	12/08/2022	Copy of emails issued by opposite party on the day of trip
Exh.A.3		Copy of photographs taken by complainant during pickup
Exh.A.4		Copy of photographs of the defective vehicle taken after the incident
Exh.A.5	12/08/2022 to 25/08/2022	Copy of email communication between complainant and opposite party regarding complaints raised by complainant
Exh.A.6	12/08/2022 to 18/08/2022	Copy of screenshots of booking page
Exh.A.7	19/08/2022	Copy of legal notice issued by the complainant along with acknowledgement
Exh.A.8	26/08/2022	Copy of reply sent by the opposite party
Exh.A.9	03/09/2022	Copy of rejoinder issued by complainant along with tracking report.

DOCUMENT FILED ON THE SIDE OF THE OPPOSITE PARTY :

Exh.B.1	30/07/2022	Copy of booking ID
Exh.B.2	04/08/2021	Copy of Authorization letter

Sd/-
R. VIJAYA
MEMBER-II

Sd/-
K. GANESAN
PRESIDENT