

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION  
ERNAKULAM**

**Dated this the 29<sup>th</sup> day of July, 2023**

Filed on: 04/11/2019

**PRESENT**

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

**C.C. No. 413/2019**

**Between**

**COMPLAINANT**

Salim P.M., Puthiyedathu House, Mudavoor P.O., Vazhapilly, Muvattupuzha 686669.  
(Rep. by Adv. Tom Joseph, Court Road, Muvattupuzha 686661)

VS

**THE OPPOSITE PARTY**

M/s. State Bank of India, Pezhakkapilly Branch, Pezhakkapilly P.O., Muvattupuzha 686673.  
Rep. by its Manager.

(Rep. by Adv. K.C. Bineesh, 2<sup>nd</sup> Floor, Syed Muhammed Complex, C.P. Ummer Road, Kochi 35)

**FINAL ORDER**

**V. Ramachandran, Member:**

**1) A brief statement of facts of this complaint is as stated below:**

The complainant is a road tarring contractor and he is having only educational qualification of 8<sup>th</sup> standard. This complaint is pertaining to the fraudulent withdrawal of money from the bank account of the complainant. The complainant is the holder of Account No. 57043753463 of SBI Muvattupuzha Branch. The complainant is having ATM card facility also. Somebody has fraudulently withdrawn an amount of Rs.20,000/- on 26/12/2018, Rs.20,000/- on 27/12/2018 and again Rs.20,000/- on 27/12/2018 and a total sum of Rs.1,60,000/- was withdrawn within 3 days from the account of the complainant on fraudulent transaction by unknown people. The complainant had noticed non-working of ATM card and therefore approached the opposite party, the opposite party informed the complainant that the Bank in the process of replacing of old card with chip cards. Accordingly the complainant surrendered his card and given a new card bearing No. 4592000175754895. The complainant further states that after the receipt of the card he had never travelled beyond the limits of Kottayam, Ernakulam and Idukki districts. On 28/12/2018 at 5.30 am the complainant went to the ATM counter at Koothattukulam and on finding the balance had shocked to know the balance in the credit of the complainant's account which was only Rs.3,011/-. It was then the complainant recognized that he had lost Rs.1,60,000/-

from his account. Immediately the complainant approached the opposite party and surrendered the card with opposite party. Further he had preferred an application to the opposite party bank which was not resulted fruitfully. Hence the complainant approached Banking Ombudsman and thereby received an amount of Rs.80,000/- subsequently another Rs.10,000/- credited into the account of the complainant. Now the complainant approached this Commission seeking an order directing the opposite party to disburse the balance amount of Rs.70,000/- to the complainant.

Upon notice from this Commission opposite party appeared and filed their version.

The opposite party stated in their version that they are not responsible for paying the amount to the complainant since there is no deficiency in service or unfair trade practice occurred from their side and stated that the complainant had lost the money is correct and the transaction were ATM withdrawals, for which the opposite party had given SMS alert to the complainant. The complainant being a customer of the bank is duty bound to abide by the terms and conditions relating to the conduct thereof and also any change brought about therein from time to time. SMS notifications have been introduced by banks due to the increased thrust on financial inclusion, risk management, customer protection and considering the recent surge in customer grievances relating to unauthorized transactions resulting in debits to their account/cards. The opposite party had also stated that an amount of Rs.80,000/- and another Rs.10,000/- were given back to the complainant. This is crux of the version filed by the opposite party.

The complainant had filed 4 documents which are marked as Exbt. A1 to A4 and the opposite party filed 4 documents which are marked as Exbt. B1 to B4.

Exbt. A1 is the copy of complaint filed by the complainant before Muvattupuzha Police Station, Exbt. A2 is the copy of account statement of the complainant, Exbt. A3 is the copy of complaint given to the opposite party, Exbt. A4 is the copy of FIR, Exbt. B1 is the copy of statement of account of complainant, Exbt. B2 is the copy of SMS confirmation Report, Exbt. B3 is the copy of complainant's account opening form, Exbt. B4 is the copy of the order of Banking Ombudsman.

"The relation between a bank and its customers arises out of the contracts entered into between them. Such contracts consists of general terms applicable to all transactions and also special terms applicable to the special services, if any, provided by the bank to its customers. The relationship between a bank and its customers, in so far as it relates to the money deposited in the account of a customer, is that of debtor and creditor. The contractual relationship exists between

a bank and its customers are founded on customs and usages. Many of these customs and usages have been recognized by courts and it is now an accepted principle that to the extent that they have been so recognized, they are implied terms of the contracts between banks and their customers. Duties of care is an accepted implied term in the contractual relationship that exists between a bank and its customer. It is impossible to define exhaustively the duties of care owed by a bank to its customer. It depends on the nature of services extended by the bank to its customers. But one thing is certain that where a bank is providing service to its customer. It owes a duty to exercise reasonable care to protect the interests of the customer. Needless to say that a bank owes a duty to its customers to take necessary steps to prevent unauthorised withdrawals from their accounts. As a corollary, there is no difficulty in holding that if a customer suffers loss on account of the transactions not authorized by him, the bank is liable to the customer for the said loss”.

In the instant case the complainant is not duty bound to read all the messages and some among them have been received in the odd hours of night by the complainant and hence the complainant had established his argument on merit and therefore the following orders are passed.

1. The opposite party shall return Rs.70,000/- (Rupees seventy thousand only) with interest from the date of loss of the amount to the complainant.
2. The opposite party shall pay an amount of Rs.10,000/- (Rupees ten thousand only) as compensation to the complainant.
3. The opposite party shall pay an amount of Rs.5,000/- (Rupees five thousand only) as cost of proceeding to the complainant.

All the amount shall be paid by the opposite party within 30 days from the date of the receipt of a copy of this order.

Pronounced in the Open Commission on this the 29<sup>th</sup> day of July, 2023.

Sd/-

V.Ramachandran, Member

Sd/-

D.B.Binu, President

Sd/-

Sreevidhia.T.N, Member

Forwarded/by Order

Assistant Registrar