

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
U.T., CHANDIGARH**

Appeal No.	:	114 of 2023
Date of Institution	:	31.05.2023
Date of Decision	:	05.10.2023

Dr. Ajay Sood son of late Sh. Dharam Inder Sood r/o 2816, Wind River Court, Modesto, California, USA and having Local address as H. No.19, Sector 19A, Chandigarh.

Email:-soodajay678@gmail.com

Phone:- 0012094852541

.....Appellant/Complainant

V e r s u s

Bank of India SCO 81-83, Sector 17-B, Bank Square, Chandigarh-160017 through its Chief Manager/General Manager/Manager/authorized signatory.

Email:- Chandigarh.chandigarh@bankofindia.co.in

Phone:-0172-2759800

.....Respondent/opposite party

BEFORE: JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT.

MR.RAJESH K. ARYA, MEMBER

Present:- Sh.Munish Goel, Advocate for the appellant.

Sh.Ranjeet Singh Khural, Advocate for the respondent.

PER JUSTICE RAJ SHEKHAR ATTRI, PRESIDENT

The complainant has assailed the order dated 27.03.2023 passed by the District Consumer Disputes Redressal Commission-I, U.T., Chandigarh (in short the District Commission), vide which the consumer complaint bearing no.575 of 2020 filed by him was dismissed by it holding as under:-

“.....The sole grouse of the complainant through the present complaint is that the amount of Rs.98 lacs and 35 lacs debited fraudulently from his account by the OPs at Chandigarh when he was in USA. As per case of the complainant after lodging of complaint on 20.7.2018 and by

regular follow ups with the OP bank, the loss of amount of Rs.98.00 lac and 35.00 lac was made good by the OPs on 10.12.2018 and 11.12.2018 respectively. Now through the present complaint the complainant is seeking interest @18% for the period when the amount was fraudulently debited from his account till the recovery alongwith compensation and litigation cost.

It is admitted case of the complainant that the major loss of Rs.1.33 crore was made good by the OP bank in the month of December 2018. It is also admitted by the complainant in para No.30 of the complaint that Rs.4,32,115/- has been paid to him by the OP bank towards interest on 24.10.2019. Meaning thereby the OPs had acted upon the complaint of the complainant regarding the fraudulent transaction from his account and the bank lodged FIR with the police and consequently, got the money reversed in the account of the complainant which was debited fraudulently from his account. Not only this, the OP had also paid interest to the complainant.

Thus, in our opinion no case is made out against the OP bank. Had the OP bank not acted on the complaint of the complainant and got his money reversed in his account thereby causing loss of money to the complainant then the case of the complainant would have been different. But in the instant case the OP bank sincerely made efforts and got the money credited back in the account of the complainant and also paid interest amount being responsible towards its customer. Even otherwise the fraud was committed by the third person and it is not the case of the complainant that the fraud was done in connivance with employee of the bank. Therefore, we are of the opinion that since the money alongwith interest admittedly received by the complainant from the bank, therefore, there is no liability left on the part of the OP bank, hence, no case is made out against the OP bank.

In view of the aforesaid discussion, the present consumer complaint, being devoid of any merit, is hereby dismissed leaving the parties to bear their own costs.....”

2. Before the District Commission, it was the case of the complainant, that he is an NRI having NRO account with the opposite party, with a credit balance of Rs.1,33,51,945.48 as on 4.5.2018. The opposite party also issued cheque book to the complainant to operate the said account. In the month of July 2018 the complainant was shocked to discover that two fraudulent debit entries were made from his account on 16.5.2018 showing cheque No.53710 for a sum of Rs.98 lacs and another cheque No. 53711 for a sum of Rs.35 lacs were cleared into the credit of some Sachin Yadav and Babloo Cycle Service, though the original cheques were lying with the complainant. The complainant reported the matter to the opposite party vide email dated 20.7.2018 and its Assistant Manager vide email dated 21.7.2018 asked him to send scanned copy of original cheques and also sent emails to the Branch offices where the illegal transaction had taken place. The complainant vide email dated 21.7.2018 registered FIR with the Chandigarh Police for the fraudulent transaction of Rs.1.33 crore from his account. After much persuasion, ultimately, the opposite party credited the amount of Rs.98 lacs in the account of the complainant on 10.12.2018 and Rs.35 lacs on 11.12.2018 but without any interest. Again after long persuasion the opposite party paid only a minimal amount of Rs.4,32,115/- as interest to the complainant on 24.10.2019. However, despite several requests and sending of legal notice, the opposite party failed to pay compensation for the harassment and loss of money and time of the complainant. Hence, consumer complaint was filed before the District Commission.
3. Defence of the opposite party was struck off by the District Commission vide order dated 07.03.2023, as the written statement filed by it beyond the period of 45 days was ordered to be taken off from the record.
4. The District Commission after hearing the contesting parties and on going through the material available on record dismissed the consumer complaint, in the manner stated above. Hence this appeal has been filed by the appellant/complainant for setting aside the order impugned and granting him relief, as prayed for by him in the main consumer complaint.
5. We have heard the contesting parties and carefully gone through the material available on the record and also the written arguments.

6. Counsel for the appellant/complainant contended with vehemence that though the amount of Rs.98 lacs and Rs.35 lacs has been credited to the account of the complainant with minimal interest of Rs.4,32,115/- on 24.10.2019, yet, it was on account of the said negligence on the part of the respondent/opposite party that the appellant underwent tremendous mental agony, harassment besides financial loss on following counts, for which he was entitled to be compensated but the District Commission fell into a grave error by dismissing the consumer complaint, holding to the contrary:-
- a. Amount spent by him on account of certifying number of documents at Consulate General of India at San-Francisco, as the same were required to be sent to India to initiate legal proceedings;
 - b. Amount spent by him for travelling within USA for arranging certain documents and also against the air tickets for travelling to India (two times)
 - c. Loss of salary on account of non attending of office for number of days, as he had to arrange the documents aforesaid, to travel to India for handing over the original cheques in question to his lawyer which were required to be submitted before the Court(s) in India and also to suffer his statements before different Officers of the Court and Police in the matter;
 - d. Payment of legal fees to the Advocates for initiating legal proceeding before number of Court including this Commission;
 - e. Amount spent by him towards medical expenses, as he suffered stress disorder when he came to know regarding the said fraudulent transaction in his account;
 - f. Amount spent by him, during travel from one place to another place within India to meet/put presence before the advocates concerned, authorities, bank officials, Courts etc.

He further submitted that in case the order passed by the District Commission is not set aside and the appellant is not adequately compensated for the loss suffered by him in the matter and also for mental agony and harassment, an irreparable loss will be caused to the appellant.

7. On the other hand, counsel for the respondent/opposite party submitted that the order impugned passed by the District Commission did not suffer from any illegality or perversity and as such the same needs to be upheld.
8. The moot question which falls for consideration is, as to whether, the appellant is entitled to get any compensation, irrespective of the fact that the amount which had been fraudulently withdrawn from his account had been credited back to his account alongwith interest by the opposite party? It may be stated here that the appellant has placed reliance on Circular Annexure P-16 dated 05.11.2014, having been issued by Reserve Bank of India relating to preventive measures to be taken qua cheque related fraud cases, relevant part of which is reproduced hereunder:-

“.....Cheque related fraud cases - preventive measures

The rise in the number of cheque related fraud cases is a matter of serious concern. It is evident that many of such frauds could have been avoided had due diligence been observed at the time of handling and/or processing the cheques and monitoring newly opened accounts. Banks are, therefore, advised to review and strengthen the controls in the cheque presenting/passing and account monitoring processes and to ensure that all procedural guidelines including preventive measures are followed meticulously by the dealing staff/officials. Given below are some of the preventive measures banks may follow in this regard. The list is only indicative.

Ensuring the use of 100% CTS - 2010 compliant cheques.

Strengthening the infrastructure at the cheque handling Service Branches and bestowing special attention on the quality of equipment and personnel posted for CTS based clearing, so that it is not merely a mechanical process.

Ensuring that the beneficiary is KYC compliant so that the bank has recourse to him/her as long as he/she remains a customer of the bank.

Examination under UV lamp for all cheques beyond a threshold of say, Rs 2 lakh.

Checking at multiple levels, of cheques above a threshold of say, Rs. 5 lakh.

Close monitoring of credits and debits in newly opened transaction accounts based on risk categorization.

VII. Sending an SMS alert to payer/drawer when cheques are received in clearing.

The threshold limits mentioned above can be reduced or increased at a later stage with the approval of the Board depending on the volume of cheques handled by the bank or its risk appetite

2 In addition to the above, banks may consider the following preventive measures for dealing with suspicious or large value cheques (in relation to an account's normal level of operations):

a) Alerting the customer by a phone call and getting the confirmation from the payer/drawer.

b) Contacting base branch in case of non-home cheques.

The above may be resorted to selectively if not found feasible to be implemented systematically.

3 It has been reported that in some cases even though the original cheques were in the custody of the customer, cheques with the same series had been presented and encashed by fraudsters. In this connection, banks are advised to take appropriate precautionary measures to ensure that the confidential information viz., customer name / account number / signature, cheque serial numbers and other related information are neither compromised nor misused either from the bank or from the vendors' (printers, couriers etc.) side. Due care and secure handling is also to

be exercised in the movement of cheques from the time they are tendered over the counters or dropped in the collection boxes by customers.

Yours faithfully,

(Manoj Sharma) Chief General Manager.....”

Apart from it, in circular dated 01.07.2013, having been issued by the Reserve Bank of India, clause no.2.1 and 3.3 under **Fraud-Classification and Reporting** provides as under:-

“...2.1. CLASSIFICATION OF FRAUDS

2.1 In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:

a) Misappropriation and criminal breach of trust.

b) Fraudulent encashment through forged instruments, manipulation of books of account or through fictitious accounts and conversion of property.

c) Unauthorised credit facilities extended for reward or for illegal gratification.

d) Negligence and cash shortages.

e) Cheating and forgery.

f) Irregularities in foreign exchange transactions.

g) Any other type of fraud not coming under the specific heads as above.

3.3 Frauds involving 100 lakh and above

An respect of frauds involving 100 lakh and above, in addition to the requirements given at paragraphs 3.1 and 3.2 above, banks may report the fraud by means of a D.O. letter addressed to the Principal Chief General Manager, Department of Banking Supervision, RBI, Central Office,

within a week of such frauds coming to the notice of the bank's Head Office. The letter may contain brief particulars of the fraud such as amount involved, nature of fraud, modus operandi in brief, name of the branch/office, names of parties involved (if they are proprietorship/partnership concerns or private limited companies, the names of proprietors, partners and directors), names of officials involved, and whether the complaint has been lodged with the Police/CBI. A copy of the D.O. letter should also be endorsed to the Regional Office of RBI/FCMD under whose jurisdiction the bank's branch, where the fraud has been perpetrated, is functioning.....”

Similarly as per clause 6 of the circular dated 06.07.2017 having been issued by the Reserve Bank of India, all the banks were made aware regarding limited liability of customers in unauthorized transaction. Relevant part of clause no.6 reads as under:-

“.....Limited Liability of a Customer

(a) Zero Liability of a Customer

6. A customer's entitlement to zero liability shall arise where the unauthorised transaction occurs in the following events;

(i) Contributory fraud/ negligence/ deficiency on the part of the bank (irrespective of whether or not the transaction is reported by the customer).

(ii) Third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within three working days of receiving the communication from the bank regarding the unauthorised.....”

9. In the present case, it has been specifically averred by the appellant in his complaint in para nos. 34 to 37 (filed before the District Commission) as under:-

“..... 34. That the complainant had further spent 32 US Dollar i.e equivalent to Rs 2,358/-on account of certifying certain documents at Consulate General of India at San-Francisco on 08.11.2018. The price of one US Dollar in Indian Currency is Rs. 73.71/-. The said documents were required to be sent to India for legal proceeding. The copy of the expenditure made by the complainant i.e \$ 32 for certifying his documents are enclosed herewith as Annexure C/32. The complainant travelled from his residence at Wind River Court, Modesto, California to San Francisco i.e 144 Kms away for getting the documents notarized and thereafter, complainant send the same to his counsel at India through post. The complainant further spend \$96.06 for the same i.e. Rs 7,080/- for going to San Francisco and coming back. The price of one US Dollar in Indian Currency is Rs. 73.71/-.

35. That the complainant was working as Chief, CVA Interventional Radiology, The Permanente Medical Group, Kaiser Permanente Modesto Medical Center, Kaiser Permanente, America. The complainant salary for 8 hour work day was \$1317.28 during 2018 and 2019. The copy of email from the employer of the complainant Dt 18.12.2019 is enclosed herewith as Annexure C/33. The complainant had attended 23 psychotherapy sessions from August, 2018 to December, 2019 for getting care for Post Traumatic Stress Disorder due to deficiency in service on account of wrong and illegal encashment of cheques of Rs 35 Lacs and 98 Lacs on 16.05.2018. The complainant missed half day of his official work for each of these sessions i.e total 11.5 days for 23 sessions and had to take sick leave. The complainant is not paid salary for these 11.5 days by his employer. The complainant salary for 8 hour day is \$1317.28, so total wages lost to the complainant for 11.5 days comes to \$15,148.72 on account of sick leave for these 11.5 days for getting Psychotherapy during this period. The opposite parties are liable to pay the same, being the loss suffered by the complainant. The price of one US Dollar in Indian Currency is Rs.73.71/-. Accordingly, opposite parties are liable to pay Rs.11,16,612/-, on account of loss of his wages due to deficiency in service on part of opposite parties.

36. That the complainant had further suffered medical problems i.e severe Nose Bleed on account of stress and trauma being suffered by complainant on account of deficiency in service and unfair trade practice on the part of the opposite parties for illegal withdrawal of Rs. 35 Lacs and Rs 98 Lacs from the account of the complainant. The copy of the treatment record of the complainant is enclosed herewith as Annexure C/34 colly. The complainant had remained under treatment from 30 July, 2018 till 10 July, 2018 i.e for 12 days on account of traumatic stress due to deficiency in service on account of wrong and illegal encashment of cheques of Rs 35 Lacs and 98 Lacs on 16.05.2018. The complainant could not attend his services at work and had to take sick leave. The complainant is not paid salary for these 12 days by his employer. The complainant salary for 8 hours is \$1317.28, so total wages lost to the complainant for 12 days comes to \$15,807.36 on account of sick leave for these 12 days. The opposite parties are liable to pay the same, being the loss suffered by the complainant. The price of one US Dollar in Indian Currency is Rs. 73.71/-. Accordingly, opposite parties are liable to pay Rs 11,65,160/- on account of loss of his wages due to deficiency in service on part of opposite parties.

37. That the complainant had visited India during 13th November, 2019 to 07th December, 2019 for the purpose of giving his statement before Chief Judicial Magistrate, Chandigarh with relation to FIR No. 268 dated 10.08.2018 Accordingly, complainant could not attend his Job for the said period and accordingly, complainant did not get his wages for the said period i.e 25 days. The complainant salary for 8 hours is \$1317.28, so total wages lost to the complainant for 25 days comes to \$ 32,932 on account of travelling to India from 13th November, 2019 to 07th December, 2019. The opposite parties are liable to pay the same, being the loss suffered by the complainant. The price of one US Dollar in Indian Currency is Rs. 73.71/-. Accordingly, opposite parties are liable to pay Rs 24,27,415/-, on account of loss of his wages during this period due to deficiency in service on part of opposite parties.

38. That the complainant had suffered Post Traumatic Stress Disorder in the month of August, 2018 on account of illegal withdrawal of Rs. 35 Lacs and 98 Lacs from his NRO Account duly held with the opposite parties. The complainant had spent huge amount on his treatment from August, 2018 till October, 2019 i.e. \$2510 which is equivalent to Rs. 1,84,987/-. The price of one US Dollar in Indian Currency is Rs. 73.71/-. The copy of medical bills from August, 2018 to October, 2019 are enclosed as Annexure C/35 Colly.

39. *That the complainant has further paid a legal fee to Sh. Ashu Punchhi, Advocate \$10,588 US Dollar and also \$ 550 US Dollar i.e. equivalent to Rs. 8,20,980/-. The price of one US Dollar in Indian Currency is Rs. 73.71/-. The copy of the transfer of the said amount to Sh. Ashu Punchhi Advocate is enclosed herewith as Annexure C/36 and C/37.*

40. *That the complainant had visited India for the period 13.11.2019 to 07.12.2019. The copy of the passport showing the entry of the complainant during this period is enclosed as Annexure C/38. The complainant had purchased the Air Ticket from San Francisco, USA to Delhi and his return for a sum of 4192.65 USD. The copy of the air tickets are enclosed as Annexure C/39. The price of one US Dollar in Indian Currency is Rs. 73.71/-. Accordingly, the complainant had spent Rs. 3,09,040/- for the purchase of the said Air Ticket.*

41. *That the complainant has further purchased the Air Ticket from Delhi to Chandigarh for 14.11.2019 for a sum of Rs. 15,149/-. The copy of the Air Ticket for Delhi to Chandigarh is enclosed herewith as Annexure C/40.*

42. *That complainant went to San Francisco on 08.11.2020 and lost his one day wages i.e \$ 1317.28 for getting his documents Notarized from Indian Embassy at San Francisco. The price of one US Dollar in Indian Currency is Rs. 73.71/-. Accordingly, complainant has lost Rs 97,095/- and opposite parties are liable to pay the same.*

43. *That the complainant has further spent a sum of Rs. 5 lacs on account of travelling from one city to another and also within the city during his visit at Chandigarh from 13.11.2019 to 07.12.2019 with regard to the meeting with police officials, advocate, authorities, bank officials, District Court Chandigarh etc. etc. The complainant further hired taxi for going from Chandigarh to Delhi Airport and paid Rs 5,000/- for same. The opposite parties are liable to pay Rs 5,05,000/- on account of expenditure being made by complainant on account of deficiency in service for illegal encashment of two cheques of Rs.35 lacs and 98 lacs on 16.05.2018.....”*

10. The respondent has fairly admitted in para no.5 of its reply to the legal notice i.e. Annexure C-31, that fraudulent cheque was cloned by gang of criminals. Relevant part of the said para is reproduced hereunder:-

“.....5. That the contents of para 5 are denied as wrong and misleading. The debit entries of two cheques were on 16.05.2018. Your client failed to access his account regularly before 20.07.2018. The wrongful transactions were reported after two months on 21.07.2018. The matter was promptly reported to Chandigarh Police by my client. It was noticed that the crime was committed by gang of criminals who were able to access account details and cheque book of your client, and used the modus operandi of cloned cheques/forged signatures of your client. The lapses of access to account details, cloning of cheques and forging the signatures squarely lies on your client as details of account and original cheques were in the custody of your client.”

11. Thus, undisputedly, forged cheques with forged signatures of the appellant were used for committing fraud and forgery. The cheques in question were ordinary and not issued under CTS ([Cheque Truncation System](#)). It is significant to mention here that it was the duty of the passing officials of the Bank/opposite party to exercise due care, required of a prudent banker, which they failed. Comparison of the cloned cheques and the original cheques, through naked eyes, reveal material difference between them, but the officials of the opposite party failed to notice the same. Thus, it has been proved that in the present case, the respondent has failed to take any preventing measures/precaution to strengthen the existing system and controls to detect the fraud and as such it can easily be said that the respondent failed to follow the instructions of the circulars, referred to above, having been issued by the RBI. The Master Directions on Frauds were necessitated to protect the interests of depositors and banks from the growing instances of frauds, which were to be duly complied with by the banks to take pre-emptive measures in public interest to ensure that fraudulents are brought to justice and loss caused to the banks is mitigated. However, in the present case, the opposite party failed to act in accordance with the circulars of the RBI, issued from time to time, and especially, Circular Annexure P-16 dated 05.11.2014, extracted above, as officers/officials of the opposite party have failed to take necessary steps to strengthen the preventive measures against frauds. Had the officials/ officers of the opposite party been diligent enough, the fraud of Rs.1.3 crores would not have taken place and resultantly, the complainant would not have to carry out the entire exercise i.e. spending amount for certifying number of documents at Consulate General of India at San-Francisco, which were required to initiate legal proceedings; travelling within USA for arranging certain documents and also against the air tickets for travelling to India etc. which has definitely caused him mental agony, harassment and financial loss.
12. Now the question which arises for consideration is, as to what amount the complainant is entitled to get, as compensation? It may be stated here that no doubt, the respondent has already paid interest of Rs.4,32,115/- on 24.10.2019 to the appellant on the amount which was fraudulently debited from his account and also the amount of Rs.1.3 crores stood credited in his account, in the manner stated above, but in our considered opinion the said amount of interest cannot be said to be just and fair compensation against the mental agony, harassment and financial loss suffered by the appellant, especially, when it is proved that the opposite party was negligent in providing services to the complainant. Thus, in our considered opinion, the appellant is also entitled to get an amount of Rs.5,33,627/-, details of which have been given below, as compensation, for the mental agony, harassment and financial loss suffered by him, over and above the amount of interest, already received by him from the respondent:-
- i. Rs.7080/- (96 USD) plus Rs.2358/- (32 USD as per Annexure C-32) towards amount spent by him on account of certifying number of documents at Consulate General of India at San-Francisco to India to initiate legal proceedings and also the amount spent by him for travelling within USA for arranging the said certain documents for the same;
 - ii. Rs.3,09,040/- (4192.65 USD as per ticket, Annexure C-39 plus Rs.15149/- (as per ticket Annexure C-40) spent by him for purchase of air tickets for travelling from San Francisco to India and during travel from one place to another place within India to meet/put presence before the advocates concerned, authorities, bank officials, Courts etc.; and
 - iii. Rs.2 lacs as compensation for mental agony and harassment.
13. Now coming to the compensation claimed towards loss of payment of legal fees to the Advocates for initiating legal proceedings in the matter; salary on account of non attending of office hours for number of days; and also amount spent by him towards medical expenses etc. it may be stated here that in our considered opinion, there was no legal bar for the complainant to contest the case in person, once he arrived India, but he preferred to hire Advocate for the same and, as such, this Commission is not inclined to grant any relief qua the legal fees paid by the appellant to the Advocate(s). As far as compensation towards the loss suffered by the appellant towards salary on account of non attending of office hours and also amount spent by him towards medical expenses etc. is concerned, it may be stated here that it is settled law that consumer commission are required to award just and fair compensation. Therefore, the relief already awarded by this Commission in this appeal and interest on the amount in question already received by the complainant, shall take care of all the losses suffered by the appellant in this case.

14. Keeping in view the above discussion, we are of the considered view that the impugned order passed by the District Commission, being not based on the correct appreciation of evidence and law on the point, suffers from illegality and perversity, warranting the interference of this Commission. Resultantly, this appeal stands partly allowed and the order impugned is set aside. The consumer complaint stands partly allowed and respondent-opposite party is directed as under:-
- i. To make payment of Rs.5,33,627/-, as explained above, alongwith interest @9% p.a. to the appellant/complainant from the date of filing consumer complaint before the District Commission onwards, within a period of 30 days, from the date of receipt of a certified copy of this order, failing which, thereafter, the said amount shall carry penal interest @12% p.a. from the date of default, till realization.
 - ii. To pay cost of litigation to the tune of Rs.50,000/- to the appellant/complainant, within a period of 30 days from the date of receipt of a certified copy of this order, failing which, the said amount shall carry interest @9% p.a. from the date of default, till realization.
15. Certified copies of this order be sent to the parties, free of charge.
16. The appeal file be consigned to Record Room, after completion and record of the District Commission concerned be sent back immediately.

Pronounced

05.10.2023

Sd/-

[JUSTICE RAJ SHEKHAR ATTRI]

PRESIDENT

Sd/-

(RAJESH K. ARYA)

MEMBER

Rg