

Complaint presented on :18.02.2010 Date of
disposal :28.11.2023

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION,
CHENNAI (NORTH)

@ 2ND Floor, T.N.P.S.C. Road, V.O.C. Nagar, Park Town, Chennai – 600 003.

PRESENT : THIRU. G. VINOBA, M.A., B.L., :PRESIDENT
THIRU.V.RAMAMURTHY,B.A.,B.L.,PGDLA., :MEMBER-II
SMT. KAVITHA KANNAN, M.E., :MEMBER-I

C.C. No.228/2018

DATED THIS TUESDAY THE 28th DAY OF NOVEMBER 2023

P.Dileep Kumar
S/o Parasmal,
No.129, Strahan Roads,
Otteri, Chennai-600 012

..Vs..

.. Complainant.

M/s. Deccan's Park Pvt Ltds
No.36, Royapettah High Road,
Royapettah, Chennai-600 014.

.. Opposite party.

Counsel for the complainant : M/s. K.Lavan and C.Abhishek

Counsel for opposite party : M/s.Chinaswamy

ORDER**THIRU. V. RAMAMURTHY, B.A., B.L., PGDLA, MEMBER**

This complaint has been filed by the complainant against the opposite party under section 12 of the Consumer Protection Act, 1986 prays to directing the Opposite parties to pay a sum of Rs.2,00,000/- towards compensation for the damage of complainant's car & mental agony & harassment caused to the complainant and a sum of Rs.2,500/- towards legal notice and cost of this complaint.

This complaint was originally filed before the District Commission, Chennai (South) and taken on file in C.C. No. 98 of 2010. Thereafter, the said complaint has been transferred to this Commission as per the proceedings of the Hon'ble S.C.D.R.C. and taken on file as C.C. No.228 of 2018.

1.THE COMPLAINT IN BRIEF:

The Complainant submits that on 03.04.2009 complainant had visited opposite party's hotel for a meeting at about 8.00 pm and handed over his car key to (i.e. Hyundai i10 Regn. No.TN04AC0968) to the opposite party's valet parking driver and received valet parking tag and thereafter went to the banquet hall. The complainant further states that after finishing the dinner he came out at about 10.45 pm and handed over the valet tag to the security personnel of opposite party and after waiting for about 30 minutes, he was shocked to know that his car was missing from the hotel premises. On checking the in and out register it was noticed that the car had left the hotel at 08.30 pm itself. The complainant further states that after the said incident none of the opposite party's staff came forward to his help for recovery of the vehicle and the complainant himself took all the efforts to call the police and lodged a complaint and FIR was given to him by the E-2 Royapettah Police Station at 3.00 am on 04.04.2009. The complainant further submits that on 26.04.2009 he was informed by the J-2 Adyar Police Station that his vehicle was lying in the station from 18.04.2009 as it met with an accident and was damaged badly and moreover that his vehicle had hit another vehicle and damaged the other vehicle and a case was registered against him. This caused mental agony & distress to him and to his family members and the said act resulted in loss of his reputation and credibility. The complainant further states that due to opposite party's deficiency in service and hostile behavior, the complainant had to suffer a lot of pain and distress besides he had to bear the loss of damage of his vehicle for repairing and reconditioning and he was without vehicle for 50 days by which his activity was affected for travelling. The complainant further states that this is not the first time that a vehicle has been theft from opposite party's premises and same kind of incident happened with another customer in December 2008 and the opposite party having known the facts failed to provide fool proof security in their premises. The complainant had sent a legal notice to opposite party on 28.05.2009 demanding to pay a sum of Rs.2 Lakhs as compensation and Rs.2,500/- towards legal notice but the opposite party failed to make payment or sent a reply. Hence this complaint.

WRITTEN VERSION OF OPPOSITE PARTYIN BRIEF:

The opposite party submits that the complaint filed by the complainant is neither maintainable under law nor under the facts and circumstances of the case. The complainant had filed this complaint against wrong person and the complainant has to amend the cause title accordingly otherwise the same is not maintainable against law. The opposite party submits that it is true that the complainant on 03.04.2009 parked his vehicle at about 8.00 pm and handed over the car key of his Hyundai i10 car vide registration No. TN04AC0968 with opposite party's staff for valet parking and he was given with valet parking tag and thereafter the complainant went to the banquet hall. The opposite party submits that the complainant's car was stolen by someone by using a fake tag for the above car and therefore there is no deficiency in the case. The thief took the car using fake tag and the staff also on seeing the tag and believing it to be genuine handed over the car to him. The opposite party had maintained inward and outward register for the parked vehicles and hence it is wrong to say that the opposite party had not taken any care of parked vehicles. The opposite party reported the theft to the local police station and a complaint has been duly registered by the opposite party on 04.04.2009 with Commissioner of Police and hence it is wrong to say that opposite party has not co-operated in tracing the stolen vehicle. The opposite party submits that they had taken lot of efforts with

the police personnel and finally it was traced on 6.04.2009 by Adyar Police Station. It seems that complainant's car met with an accident and the person stolen the car was highly influential person in the society. The opposite party submits that it is wrong that car was damaged badly and further there was no loss of reputation or credibility for complainant due to the case registered in the name of complainant. The opposite party further submits that the complaint is devoid of particulars like date of purchase, whether any claim was made to insurance company etc. The opposite party further submits that once the vehicle was traced the complainant failed to file a complaint against the real culprit who stolen the vehicle. The opposite party submits that opposite party was all along with the complainant and helped him in lodging complaint and also lodged a separate complaint with Commissioner of Police and hence there is no deficiency in service on the part of opposite party and therefore prays this Hon'ble District Forum to dismiss the complaint.

3. POINTS FOR CONSIDERATION:

1. Whether the complainant is a consumer?
2. Whether the opposite party caused any deficiency in services as alleged in the complaint?
3. Whether the complainant is entitled to the reliefs prayed in the complaint.

If, so to what extent?

The complainant had filed proof affidavit, written arguments and documents Ex.A1 to Ex.A15 on his side. The opposite party had filed written version, proof affidavit and written arguments. No documents were filed by the opposite party. Oral arguments of the learned counsels of both sides heard.

4. Point No.1:-

On complainant side Certificate of Registration is marked as Ex.A1, Certificate of Insurance as Ex.A2, Vehicle incoming and outgoing records as Ex.A3, Complaint given by complainant as Ex.4, Complaint given by opposite party as Ex.A5, FIR No.187/2009 as Ex.A6, Newspaper clippings as Ex.A7, Representation by complainant to opposite party as Ex.A8, FIR No.197/09 as Ex.A9, Notice u/s 138 of M.V. Act as Ex.A10, Car towing charges receipt as Ex.A11, Newspaper clipping as Ex.A12, Credit Invoice of Kundai Service as Ex.A13, Legal Notice to Opposite party as Ex.A14, Acknowledgement Card as Ex.A15.

The admitted fact of the complaint is that complainant had visited opposite party hotel and parked the vehicle at about 08.00 pm and handed over his car key of his Hyundai i10 Car with registration No.TN04ac0968 to staff of opposite party for valet parking and went to the banquet hall.

The opposite party contended that complainant had visited the opposite party hotel and availed valet parking services as free of cost and went to banquet hall to attend a business discussion and hence the complainant cannot be treated as a consumer u/s 12(1)(a) of Consumer Protection Act, 1986 and the complainant has to file the case only before Civil Court. On perusal of averment of the complainant it is observed that complainant had visited the opposite party hotel for dinner and on perusal of Ex.A4, the complaint given by the complainant to police and Ex.A6, FIR No.187/2009, it is observed that the complainant had visited opposite party hotel for meeting which is not disputed by the opposite party. According to Section 2 (7) (ii) of Consumer Protection Act, 2019 "*a consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.*" In this instant complaint it is an admitted fact that the complainant had visited the opposite party hotel and after receipt of valet parking tag went to banquet hall and had dinner. Accordingly, the complainant is a beneficiary of service other than the person who hires or avails of services u/s 2 (7) (ii) of Consumer Protection Act 2019 and therefore the

contention of the opposite party that complainant is not a consumer is not maintainable. Point No.1 is answered accordingly.

5. Point No.2:

The opposite party in their averments contended that the car was stolen by one Charles, who was not added as a party to this case. Further the Insurance Company also shall be made as a party to this case. In the absence of non-joinder of the above parties, the complaint is not maintainable. On perusal of the averments of the complainant, it is observed that the complainant nowhere came to know or mentioned that one Mr. Charles had stolen the car. On perusal of Ex.A12, the newspaper clipping, it is observed that Mr. Charles had stolen a car from opposite party hotel and in such a situation the complainant cannot add Mr. Charles as one of the parties to this complaint without any material evidence. Further from the averment of the complainant, it is observed that the complainant never claimed any amount from the insurance company for the damage caused during the accident. Further the complaint is devoid of particulars regarding whether any insurance claim was made by the complainant regarding the damage to his car and whether he has received any amount from the insurance company towards such damages. In the absence of any claim for damages from the insurance company, the insurance company is not required to add as a party to this complaint. Therefore, we are of the considered opinion that the contention of the opposite party that the complaint is bad non-joinder of Mr. Charles and Insurance Company as necessary parties to this complaint is not maintainable.

The complainant alleged that after having dinner and came out at 10.45 pm on 03.04.2009 he handed over the valet tag to the security personnel of the opposite party for getting his vehicle. After 30 minutes, the complainant was shocked to know that the car was missing and on checking the in and out register of the opposite party, the car left the hotel at 08.30 pm itself. The complainant further alleged that after the theft of the car none of the opposite party's staff came forward for recovery of vehicle and it was the complainant who had taken steps to call the police and lodged a complaint and got a copy of FIR from E-2, Royapettah Police Station at 3.00 am on 04.04.2009. The opposite party security incharge of the valet parking without checking the fake tag had let the vehicle to leave the premises and thus caused negligence and deficiency in service. The complainant further alleged that he was shocked to hear from the J-2 Adyar police station that his vehicle was lying in the station from 18.04.2009 as it met with an accident and was damaged badly, and his vehicle hit another vehicle and damaged the other vehicle and a case was registered against complainant. This has caused mental agony and distress to him and his family members and resulted in the loss of reputation and creditability. The complainant alleged that he had to bear the loss of damage of his vehicle for repairing and reconditioning and he was without his vehicle for more than 50 days by which his activities were affected for travelling. The complainant had also sent a letter to the opposite party on 09.04.2009 stating the facts of the incident but the opposite party failed to reply to him. The complainant further alleged that this is not the first time that a car was stolen from opposite party premises, same kind of incident happened with another visitor in the month of December 2008 and having known of the facts, the opposite party failed to take necessary precautions to protect the belonging of the customers including the complainant and hence alleged that the above act of the opposite party is a clear deficiency in service and dereliction of duty.

Whereas on the other hand the opposite party contended that the car was stolen by using the fake tag and the staff of the opposite party also on seeing the tag and believing to be genuine handed over the car to him and hence it is wrong to say that the staff had not taken any care of parked vehicle. The opposite party properly maintained the inward and outward register as admitted by the complainant. The opposite party had installed CCTV system from 2009 itself. The opposite party further contended that a complaint was given by the opposite party to the Commissioner of Police on 04.04.2009 itself, thus taken steps to recover the stolen car. The opposite party further contended that lot of efforts were taken by the opposite party with police personnel and finally the car was traced on 26.04.2009 by Adyar Police Station. It seems the car met with an accident and the car was not damaged badly as described by the complainant. The opposite party contended that the complainant failed to follow up on the vehicle theft complaint and seeking compensation from the person who stole the car. Further the complainant took delivery of a purportedly damaged vehicle and thereby conceded his rights to claim damages and losses on account of the alleged accident from the

insurance company. The opposite party further contended that once the vehicle was traced, the complainant has not processed the accident complaint, so as to get the vehicle immediately by way of compromise. The complainant has also not processed the theft complaint to avoid court route and hence the complainant cannot explore avenues of getting undue advantage by processing this complaint against the opposite party. The opposite party further contends that there is no deficiency in service on the part of the opposite party.

On careful perusal of averments and documents it is observed that the opposite party security staff had let the vehicle out by 08.30 pm believing the tag was genuine as admitted by the opposite party. It is observed from Ex.A3, the vehicle in time was 20.00 hr and the out time was 20.30 hr. The complainant had given a complaint to the Commissioner of Police on 04.04.2009 as observed from Ex.A4 and the opposite party also had given a complaint to Commissioner of Police on 04.04.2009 itself as observed from Ex.A5. It is observed from Ex.A6, FIR had been registered by E-2, Royapettah Police Station based on the complaint given by the complainant. It appears that the complainant had sent a representation to the General Manager of Opposite party narrating the incident and alleging deficiency in service by the opposite party which is marked as Ex.A8. On perusal of Ex.A9, the FIR No.197 dated 18.04.2009, it is observed that the complainant's car with fake registration No. TN03AC3030 had met with an accident at Abiramapuram and hit another vehicle with registration No.TN07AB7531 and caused damages. It is observed from Ex.A10, that the complainant's car was traced with fake registration No.TN03AC3030 and advised the complainant to appear before the RTO Office, Chennai-600028 with necessary documents for inspection. From the above facts, it is observed that on the theft by a third person from the opposite party's premises, the complainant and opposite party were given complaint to Commissioner of Police for tracing and recovering the vehicle. The opposite party in their averment contended that CCTV was installed in 2009 itself. On perusal of Ex.A7 and A12, it appears that one Mr. Charles had stolen cars from various hotels adopting various techniques. In spite of CCTV installation and full proof of inward and outward register, the car was stolen from the premises of opposite party itself is a proven incident of carelessness and negligence on the part staff of the opposite party. It is observed from the averments of the complainant that when the car was traced out by the police authorities when it was met with an accident and the complainant had taken the car from the police authorities and spent on his own to repair the damages of the car. On perusal of Ex.A2, the car was insured with Bharti Axa General Insurance Company Limited from 01.04.2009 to 31.03.2010 and the complainant had sent a copy of the complaint to Insurance company on 04.04.2009 but there is no details regarding any claim made from insurance company. It is observed from Ex.A11 and A12, the complainant had spent a sum of Rs.56,074/-.The Manager of the opposite party who signed on behalf of opposite party in their written version had admitted that on seeing the tag and believing the same to be genuine the staff had handed over the car to thief. Therefore, the Manager of the opposite party is vicariously liable for the acts committed by the staff of the opposite party. From the above facts, it appears the opposite party even after having the knowledge of such incidents happened on previous occasions in their hotel and also in other hotels were in a negligent manner without due care allowed the thief to take the car of the complainant and thus caused deficiency in service.

This commission relied on the judgement of Hon'ble National Consumer Disputes Redressal Commission in First Appeal No.440 of 2016, Taj Mahal Hotel Vs United India Insurance Co. and 2 Ors. The facts of the case are similar to this complaint and the extract of the para 33 and para 34 are given below:

“33. Hence keeping in view all the aforementioned facts and judgments, I hold that valet parking services are provided by the Hotel for the convenience of its guests looking for a parking space and it is a special privilege which is given to the guests. A deposit is constituted from the moment a person receives a thing pertaining to another with the obligation to safely keep it and returning the same in the condition it was received. The contract of deposit was effected from the Car Owner's delivery the moment he handed over the keys of his vehicle to the Hotel valet, who, in turn, received the car keys with the obligation to keep the car safely and return it in the same condition as taken. The duty of care cannot stop with the parking of the car. The reasonable degree of care to be taken by a Hotel or any service provider while accepting the keys of a vehicle continues till the vehicle is returned to the owner in the same condition as it was taken. The plea that no separate fee is charged for the parking and hence one of the ingredients of being a “Consumer” within the meaning of Section 2(1)(d) viz. the Consideration, is missing, in my view, is also misconceived, in as much as the Valet facility, is one of the services offered by the Hotel for the comfort and convenience of its guests, a significant feature of an allurements to visit the Hotel, in preference to the other where such a facility may not be provided.

34. In my opinion, therefore, possession and control of the car had been passed on by the Complainant to the Hotel, which constituted bailment; the duty of due care implicit in the bailment, was violated by the Hotel and the ensuing liability could not be diminished by the disclaimer of liability on the parking tag. Even otherwise, the determination of deficiency in this case also rests on the entire evidential picture. The Hotel has admitted that the Complainant had dinner at their Hotel and with such an effectual consideration the question of whether the car owner is a 'consumer' does not arise. The question of whether the bailee may contractually lessen or completely avoid the ensuing 'duty of due care' imposed upon him should be considered in the light whether the bailer can be bound by any contractual provision without any notice of such provision. A mere retention of a parking receipt does not constitute notice on the terms written on the receipt. The Hon'ble Supreme Court of Utah observed that, the bailer considers the receipt to be only for purpose of identification and cannot therefore be presumed to have agreed to anything further. Any disclaimer printed on a parking tag will not be considered against the bailee and the Courts have held that such a sign cannot relieve the Service Provider of his normal duties."

In view of the above facts and circumstances, this commission is of considered conclusion that the acts of the opposite party shows gross negligence and deficiency in service which resulted in mental agony and harassment to complainant and therefore the complainant is entitled for a reasonable compensation for the same. Point No.2 is answered accordingly.

5. Point No.3

Based on the finding given to Point No.1 and 2the complainant is a consumer u/s 2(7)(ii) of Consumer Protection Act, 2019 and there is negligence and deficiency in service is observed on the part of opposite party and therefore the complainant is entitled for compensation of Rs.50,000/- and Rs.5000/- towards cost of complaint. Point No.3 is answered accordingly.

In the result, the complaint is partly allowed. The opposite party represented by its manager is directed to pay a sum of Rs.50,000/- towards compensation for deficiency in service and mental agony and harassment and Rs.5,000/- towards cost of complaint. The above amount shall be paid to the complainant within two months from the date of receipt of copy of this order failing which the above amount shall carry 9% interest from date of order to till the date of payment.

Dictated by the Member to the Steno-Typist taken down, transcribed and computerized by him, corrected by the President and pronounced by us in the open Commission on this the 28th day of November 2023.

MEMBER – I

MEMBER – II

PRESIDENT

LIST OF DOCUMENTS FILED BY THE COMPLAINANT:

Ex.A1	04.04.2008	Certificate of Registration
Ex.A2		Certificate of Insurance
Ex.A3	03.04.2009	Vehicle incoming and outgoing Records
Ex.A4	04.04.2009	Complaint given by the complainant
Ex.A5	04.04.2009	Complaint given by the Opposite party
Ex.A6	04.04.2009	FIR.No.187/2009 on the file of the E2 Royapettah police station
Ex.A7	05.04.2009	Newspaper cuttings
Ex.A8	09.04.2009	Representation made by the complainant to the opposite party
Ex.A9	18.04.2009	FIR No.197/09 on the file of J2 Adayar Traffic Investigation
Ex.A10		Notice under S.138 of M.V.Act

Ex.A11	27.04.2009	Car Towing Charge Receipt
Ex.A12	21.05.2009	Newspaper Cutting
Ex.A13	28.05.2009	Credit Invoice of Kundai Service
Ex.A14	28.05.2009	Legal notice to the Opposite party
Ex.A15	02.06.2009	Acknowledgement Card

LIST OF DOCUMENTS FILED BY THE OPPOSITE PARTY:NIL**MEMBER – I****MEMBER – II****PRESIDENT****CC.No.228/2018 dated:28.11.2023****Order pronounced**

In the result, the complaint is partly allowed. The opposite party represented by its manager is directed to pay a sum of Rs.50,000/- towards compensation for mental agony and harassment and Rs.5,000/- towards cost of complaint. The above amount shall be paid to the complainant within two months from the date of receipt of copy of this order failing which the above amount shall carry 9% interest from date of order to till the date of payment.

Member-I Member-II President