

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.**

**First Appeal No. : 26/2022
Date of Presentation :21.03.2022
Order Reserved on :15.12.2023
Date of Order :28.12.2023**

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1. The Senior Branch Manager, State Bank of India, Near New Bus Stand Una, Nangal road, Una, Himachal Pradesh.
 2. Zonal Manager, State Bank of India, 40, Vikas Nagar, SDA Complex Road, Kasumpti, Shimla-HP 171009.

..... Appellants/Opposite Parties.

Versus

Charanjit (since deceased through legal heirs)

- 1(a). Lakhinder Singh Kanwar S/o Sh. Charanjit Singh, presently residing at 87-Mosley Crescent, Brampton, Ontario/L6Y5C9, Canada, permanent resident of Ward No.4H, Olympus House, Vivek Nagar, Pirnigah Road, Una-174303
- 1(b). Vipin Pal Singh S/o Late Sh. Charanjit Singh, resident of Ward No.4H, Olympus House, Vivek Nagar, Pirnigah Road, Una-174303
- 1(c) Dr.Kiran Guleria D/o Late Sh. Charanjit Singh R/o K-11, Green Park Extension New Delhi-110016

...Respondents/LRs of complainant.

Coram

Hon'ble Justice Inder Singh Mehta, President

Whether approved for reporting?¹ Yes

For the Appellants: Mr. Ashish Jamalta, Advocate.

**For LRs of respondent: Mr.Ajay Thakur, Advocate vice
Mr.Atharv Sharma, Advocate.**

¹Whether reporters of the local papers may be allowed to see the order?

Justice, Inder Singh Mehta, President

ORDER

Instant appeal is arising out of the order dated 31.01.2022 passed by Learned District Consumer Commission, Una, in Consumer Complaint No.63/2017 titled Charanjit Singh Versus The Senior Branch manager, State Bank of India & Anr.

Brief facts of Case:

2. Brief facts of the case are that complainant Charanjit Singh (now deceased) was saving bank account holder of opposite parties at Una branch bearing A/c No. 55064766438 and he was having Rs.9,76,228.67/- in his account. On 21-06-2017 when complainant approached ATM at Shimla and withdrawn amount of Rupees 10,000/- the balance in his account was shown as Rupees 5,86,113/-. Upon this he asked his banker to provide him bank statement. On receiving the statement of his account he found that an amount of Rupees 4 Lacs has been withdrawn by someone on different dates between 12-06-2017 to 20-06-2017. An amount of Rupees 80,000/- involving 5 transactions of Rupees 10,000/- each and two transactions of Rupees 15,000/- each was withdrawn on 12-06-2017. Further an amount of Rs. 40,000/- was withdrawn on 13-06-2017 in four transactions in Rs.10,000/- each. In the same manner an amount of Rupees

40,000/- involving four transactions of Rupees 10,000/- each has been withdrawn on 14-06-2017. Similarly an amount of Rupees 80,000/- involving 7 transactions has been withdrawn on 16-06-2017, amount of Rupees 40,000/- involving 7 transactions has been withdrawn on 17-06-2017, amount of Rupees 40,000/- involving 3 transactions has been withdrawn on 18-06-2017 and finally an amount of Rupees 80,000/- involving 6 transactions has been withdrawn on 20-06-2017. In all an amount of Rupees 4 Lacs stands illegally withdrawn by somebody from the complainants savings bank account without his knowledge or with his consent and has caused him a financial loss to that extent. It is further submitted that complainant had never shared the bank details and ATM card and ATM is still in possession of the complainant. ATM card of complainant is classic and daily permissible limit is Rupees 40,000/- but transactions made in his account are beyond permissible limit and complainant smells foul play by bank officials in this case. This is also unfair trade practice on behalf of opposite parties. With these averments prayer has been made by the complainant to direct the opposite parties to compensate him for unauthorised withdrawal from the bank to the tune of Rupees 4 Lac.

3. Opposite parties resisted and contested the complaint by filing joint reply. The fact of saving bank account of complainant in the branch of opposite parties is admitted. Other averments of complaint are denied. It is submitted that complainant himself has feeded his mobile number in the details of ATM card. It is submitted that opposite parties have sent the messages in the mobile number of complainant at the time of withdrawal but complainant kept silent. It is further submitted that complainant is neither layman nor illiterate and complainant might have shared ATM card and his PIN with someone and he has misused the ATM card. It is further submitted that without inserting the card in the ATM and applying password the ATM machine will not operate and no transaction will be made. There is no deficiency in service on behalf of opposite parties. With these averments prayer has been made for dismissal of the complaint.

4. Complainant filed rejoinder in which he denied the averments made in the reply and reaffirmed and reasserted the averments as those made in the complaint.

5. Thereafter, the parties led evidence in support of their respective pleadings.

6. After hearing the parties, learned District Commission allowed the complaint against the opposite parties.

7. Feeling aggrieved by the order of learned District Commission, the appellants/bank preferred the instant appeal before this Commission.

8. I have heard learned counsel appearing for the parties and have perused the written submissions as well as additional written arguments filed on behalf of the respondent/LRs and also gone through the record carefully.

9. Learned counsel of the appellants/Bank has submitted that the impugned order is bad in law and the allegations levelled by the complainant are pertaining to misuse of ATM which was a result of his own negligence and malfeasance. Therefore, the appellants have no liability to compensate him for the alleged loss suffered by him.

10. On the other hand learned counsel of the respondent/complainant has supported the impugned order and submitted that appellants have failed to provide safety and security to the saving account of the complainant which amounts to deficiency in service. In support of his contentions, he has relied upon the order of Hon'ble National Commission in case titled HDFC Limited & Anr. vs. Jesna Jose, Revision Petition No.3333 of 2013 decided on 21st December,2020 and prays for dismissal of the appeal.

FINDINGS

11. The admitted fact which emerges on record is that the complainant was having saving account No.55064766448 in the bank of the appellants.

12. It is also an admitted fact emerging on record that a sum of Rs.4,00,000/- was withdrawn from the account of the complainant between 12.06.2017 and 20.06.2017.

13. The complainant claims that the aforesaid amount has been unauthorisedly withdrawn by someone. However, the complainant has himself stated that the ATM Card remains in his possession and he did not disclose the secret pin to anyone.

14. There is nothing on record to show that the complainant has made any prompt police complaint or FIR on 21.06.2017 pertaining to alleged unauthorized withdrawal of amount from his account.

15. The alleged disputed transactions are shown to be made between 12.06.2017 to 20.06.2017. The complainant has not produced on record any document showing that he has made any prompt written complaint to the bank officials on 21.06.2017 pertaining to alleged unauthorized withdrawal of amount from his account.

16. The plea of the complainant that he has not received any transaction messages on his mobile phone, loses its significance in the absence of his prompt action pertaining to non-receiving of messages of transaction on his mobile phone to the bank officials during the relevant period.

17. Since the ATM Card was admittedly in the custody of the complainant, he was responsible to use the same cautiously without disclosing its secret pin to anyone. When the ATM Card and its secret pin was with the complainant and as per the complainant he did not disclose the ATM pin to anyone then no one else could withdraw the amount from ATM machine without feeding its secret pin.

18. In view of the above stated facts, no deficiency in service or unfair trade practice can be attributed to the appellants/bank and as such, the order passed by the learned District Commission is liable to be set aside.

19. As far as the judgments relied upon by the respondent/complainant are concerned, same are not applicable in the facts and circumstances of the present case.

20. Consequently, appeal of the appellants/bank is allowed and the impugned order dated 31.01.2022 passed by learned District Commission below is set aside.

21. Parties are left to bear their own costs.
22. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of learned District Commission along with certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Manoj