Sunitha Vijayan Vs. the Manager, Icici Bank Ltd.. Branch Office

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Sep-01-2011

Judge : The Honourable Mr. M.K. Abdulla Sona Member

Appeal No. : First Appeal No. A/10/645 (Arisen out of Order Dated 06/10/2010 in Case No. CC/09//165 of District Kannur)

Appellant : Sunitha Vijayan

Respondent : The Manager, Icici Bank Ltd.. Branch Office

Judgement :

SHRI. M.K. ABDULLA SONA : MEMBER

This appeal prefers from the order passed by the CDRF, Kannur in C.C. No. 165/2009 dated 6th day of October, 2010. The appellant is the complainant who prefers this appeal under the order of dismissal of the complaint by the Forum below. The respondent is the opposite party/bank in the above appeal.

In short, this is a dispute in connection with the difference in the accounts which was seen in the account of the complainant. There was a shortage of Rs. 74,441/- in the account of the complainant. The complainant was having a N.R.E. account in Ajman U.A.E. She deposited Rs. 7,799/- Dirham in her account which maintained in I.C.I.C.I Bank, Kannur. Apart from this; different persons deposited Rs. 7,000/- at Kunnamkulam on 16.12.2008 and Rs. 11,300/- from Calicuton

20.12.2008. The total amount in her account is Rs. 118,300/- But it was found that there was only Rs. 43,859.53 in her account on verification on 22.12.2008. She enquired immediately with the opposite party regarding this shortage. But opposite party did not take it seriously and told her that she had withdrawn this amount through her debit card. She has not withdrawn any amount during the period. The opposite party is telling that sometimes credit card might have been lost and misused by some other persons. But the complainant was having a strong case that the debit card is then and now in the safe custody of the complainant and she used to operate ATM card only through the counter of Union National Bank, Ajman. So there is no chance of mis use. The complainant strongly believe that the shorter balance in her account is only due to the fraudulent and unfair trade practice and deficiency in service of the opposite party. The complainant never withdrawn such amount. The complainant has suffered much mental agony and huge financial loss. Hence this complaint.

The opposite parties filed their written version and admitted that a sum of Rs. 74,441/- was already withdrawn from the account of the complainant. The opposite party is not aware of the transaction of the complainant during the aforesaid period. The withdrawals were made through her ATM card. Neither the bank nor the employee can withdraw any amount without her consent. The opposite party is not in a position to say anything regarding her allegations. The opposite party suspected that her debit card might have been losed or mis used her debit card using her P I N Number by somebody. There are so many withdrawals seen in her account from 19.12.2008 to 22.12.2008. The transactions during 19th December to 22nd December, were done by using the card of the complainant. They have the allegation that the complainant used two operations through Union National Bank , Ajman, U.A.E. is incorrect and denied. If the complainant lost any amount she can approach the appropriate body or even file complaint before the police. The present case is filed only in the month of June, 2009. If some manipulation is found she has to take steps immediately. There is no deficiency on the part of the opposite party. Hence to dismiss the complaint.

The evidence consisted of the oral evidence of Pw1, Dw1,A1 to A14, There is no documents produced on the side of the opposite party. The Forum below heard both parties and perused the available evidence and taken a view that there is no evidence for any manipulation which was done by the opposite party bank in this case. The Forum below found that the complainant kept the ATM card in her safe custody and she did not disclose the PIN to any other person. In the circumstance the withdrawals of the amount was from her part. In the result the complaint was dismissed.

This appeal prefers from the above impugned order passed by the Forum below and this appeal came before this commission for final hearing on this day. Both the counsel for the appellant and the respondent are present and the counsel for the appellant vehemently argued on the grounds of the appeal memorandum that the complainant approached to the forum below with a genuine case. She did not withdraw any such amount from her account. But it is seen from her account that she already withdrew such an amount by using her ATM card. But she did not get this amount, she earned herself. She lost her valuable money due to the defect of the system arranged by the opposite party/Bank. It is nothing but a deficiency of service from their part. Even the opposite party/bank, simply neglected her very serious nature of the grievance.

Heard in detail. Both parties perused the available evidence, had not seen any reason to interfere in the order passed by the Forum below on the basis of the available evidence adduced by both sides. At the very same time ATM system, Debit system, credit card system etc. are part and parcel of the electronic banking system which aims to provide easy and better service to the consumers. Even the government is thinking to introduce the E cash systems by prohibiting manual cheque system. But at the same time there are somany incidents reported similar to the case of the complainant. In this case it is clearly noted that there is no expert evidence available from the electronics field. This Commission has seen similar cases; banks usually put their technical experts as witness to give conclusive evidence. Atleast it is the duty of the bank to check their ATM System. Unfortunately in this case, there is no such technical expert evidence adduced by both sides. I think expert opinion is highly necessary in these type of cases to say the possibility and probability about this type of incidents in the line of the transaction through the electronic system. In the circumstance, I think it is highly necessary to examine an expert witness and give opinion from either part to prove the authenticity and genuinety of the possibility of incidents alleged by the complainant in the complaint. There are experiences of money being debited from the account without physical withdrawal of money in the ATM counters. In such incidents, the balance amount is decreasing without re-imbursement of the physical cash. There may be possibility of errors in the ATM Systems. The respondent bank is claiming that the withdrawal of money was done from the Ukkraine Bank. But the complainant did not visit Ukkrane. At the same time, her bearers can go there and withdraw money by using ATM Card without her knowledge.

In the result, this appeal is allowed in part and remanded this case back to the Forum below for fresh disposal after given opportunity to both sides to adduce expert opinion regarding the possibility of these type of defects during the financial transactions of the electronic systems like ATM etc. as discussed in this case. The points of the appeal discussed and answered accordingly and directed both parties to suffer their own respective costs.

Both parties are directed to appear before the Forum below on 24th October, 2011 at 10 A.M. The office of this commission is also direct to transit the entire case records to the Forum below as early as possible.