

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

"An aware consumer is an asset to the nation"

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ADVANTAGE - I

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Bank penalised for not blocking the Debit Card, despite being informed by a third party.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2812 OF 2015

(Against the Order dated 31/07/2015 in Appeal No. 326/2007 of the State Commission Bihar)

CHINTAMANI DEVI

W/O MR. RAVINDRA NATH, LINE PAR, MIRJAPUR,
NAWADA, BIHAR

.....Petitioner(s)

Versus

CHIEF MANAGER, STATE BANK OF INDIA & ANR.
MAIN BRANCH,
NAWADA, BIHAR

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

Dated : 11 Oct 2022

ORDER

1. The present Revision Petition has been filed by the Petitioner/Complainant against order dated 31.07.2015 passed by the State Consumer Disputes Redressal Commission, Bihar, Patna (for short "State Commission") in First Appeal No.326/2007.

2. The case of the Petitioner/Complainant is that on 05.10.2006 she visited the Bank. During the course of printing the Passbook, the ATM card of the Petitioner was lost in the Bank. The Complainant had given written information to the ATM In charge on 07.10.2006 and requested that her account may be closed. The ATM In charge informed the Petitioner that her account is locked and no amount could be withdrawn from her account through ATM card. On 09.10.2006, the Complainant intimated Nawada Police Station and Sanha No.246/2006 was registered. On 11.10.2006, the Complainant again went to the Bank along with copy of the Sanha. She was shocked to know that an amount of Rs.75,028/- was withdrawn from her account despite written request made by her. On 12.10.2006, the Complainant gave an application to the Opposite Party- Bank for payment of Rs.75,028/- illegally withdrawn from her account due to the

negligence of the Bank, which the Bank failed to do. On 01.11.2006, the Complainant sent a legal notice to the Bank requesting for payment of the aforesaid amount. The Bank did not reply to the legal notice. Alleging deficiency in service on the part of the Opposite Parties, the Complainant filed a Consumer Complaint with the District Forum with the following prayer: -

“Therefore, it is prayed, the Complainant claims Rs.24,072/- (Rupees twenty four thousand seventy two) from the Opposite Parties towards the deficiency in service and mental & monetary damage and Rs.75,028/- (Rupees seventy five thousand twenty eight) which was illegally withdrawn from the account of the complainant through her lost ATM Card, total amounting to Rs.1,00,000/- along with interest, and as such the Complainant requests the Hon’ble Sir to direct the Opposite Parties to pay the claim amount of Rs.1,00,000/- along with interest to the Complainant immediately.”

3. The Complaint was resisted by the Opposite Parties by filing the written statement. It was stated that the Complainant did not give any written Complaint in the Bank regarding loss of ATM Card. On 07.10.2006 an unknown person came to the Bank and informed regarding loss of ATM Card of the Complainant. ATM In charge replied that on intimation of an unknown person, the account cannot be locked. The Complainant gave written application to the Bank in respect of loss of ATM Card for the first time on 11.10.2006 along with copy of *Sanha*. On receipt of the application, the Bank hot listed the account immediately at 12.54 hrs.

4. The District Forum after perusing the record and hearing both Parties dismissed the Complaint.

5. Aggrieved by the order of the District Forum, the Complainant filed First Appeal No.326/2007 with the State Commission. The Complainant failed to appear in the State Commission. The State Commission, vide impugned order dated 31.07.2015, concurred with the finding of the District Forum and dismissed the Appeal after hearing the Learned Counsel for the Respondents/Opposite Parties.

6. Aggrieved by the order of the State Commission, the Petitioner/Complainant has filed the instant Revision Petition with the following prayer: -

"a. Allow the present Revision Petition and set aside/quash the impugned Judgment(s)/Order(s) dated 31.07.2015 passed by the Hon’ble State Commission, Bihar, Patna in the First Appeal No.326 of 2007;

b. Set aside/quash the Judgment(s)/Order(s) dated 05.04.2007 of the Ld. District Forum, Nawada passed in Consumer Complaint No.95 of 2006;

c. Call for the records of the case if necessary;

d. Grant cost in favour of the Petitioner and against Respondent; and

e. Pass any other or further order(s) as this Hon’ble Commission may deem fit and proper in the given facts and circumstances of the present case.”

7. Heard Learned Counsel for the Parties and carefully perused the record. Learned Counsel for the Petitioner submitted that both the Fora below failed to appreciate the fact that the Complainant gave a written Complaint to the Bank on 07.10.2006 and filed a copy of the said Complaint before the District Forum. The illegal withdrawal of the amount was not possible for an unknown person without involvement of the employees of the Bank. Learned Counsel further submitted that the Respondent Bank had admitted in its affidavit evidence as well as Reply to the Complaint that the Bank had information of loss of ATM Card with effect from 07.10.2006. Both the Fora wrongly concluded that that prior to 11.10.2006 the Complainant did not give written Complaint to the Bank regarding loss of ATM Card.

It was further submitted that the Bank had not filed any evidence in rebuttal to the allegations of the Complainant.

8. Learned Counsel for the Respondents/Opposite Parties submitted that the Complainant had not given any application/complaint on 07.10.2006 regarding loss of her ATM Card. On the contrary, the Complainant gave an application to that effect for the first time only on 11.10.2006. On receipt of the application, her account was immediately locked at 12.54 hrs. On 07.10.2006, an unknown person came to the Bank Branch and informed that the ATM Card of the Complainant was lost. The Opposite Party had told that person that on intimation of an unknown person, the account of the Complainant could not be hot listed. It was also submitted that had the ATM Card of the Complainant been lost on 05.10.2006, she should not have taken four days to lodge Police Complaint and six days to inform the Bank. For the negligence on the part of the Complainant, the Opposite Party Bank cannot be made to suffer. The impugned order is justified and the Revision Petition is liable to be dismissed.

9. The loss of ATM card is admitted by the Parties. Withdrawal of the amount is also admitted. The only dispute relates to the date of intimation of loss of ATM Card to the Bank. The details of the withdrawal of the amount are as follows: -

07.10.2006	Rs.15,000/-
08.10.2006	Rs.15,028/-
09.10.2006	Rs.15,000
10.10.2006	Rs.15,000/-
11.10.2006	Rs.15,000/-
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	Rs.75,028/-
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10. The Complainant stated that intimation regarding loss of ATM card was given to the Bank on 07.10.2006 with the request to close the ATM Card. The ATM Officer informed the Complainant that her ATM Card is hot listed and assured that there would be no withdrawal of money from her account through ATM. Regarding the date of intimation of loss of ATM Card to the Bank, the District Forum held that the Complainant could not show that she had informed the Bank prior to 11.10.2006. The State Commission also observed that the Complainant had not produced any evidence to support the allegation that she informed the Bank about loss of her ATM Card on 07.10.2006.

11. In para-4 of the reply filed before the District Forum, however, the Opposite Party Bank admitted that on 07.10.2006 an unknown person came to the Bank and informed that ATM Card of the Complainant had been lost. The Opposite Party Bank therefore was intimated and had knowledge of the loss of ATM Card, though may be through an unknown person. The Bank was very well aware about the loss of the ATM Card and the consequences thereof. The Bank, however, did not take any step to ensure the safety of the Complainant's money. When the Bank had intimation about loss of ATM Card, they could have freezed the account of the Complainant and intimated on her registered mobile number. It is not the case of the Opposite Party Bank that they did not have the mobile number of the Complainant. The Opposite Party Bank was, thus, deficient in protecting the money of the Complainant, in spite of intimation and knowledge of loss of ATM Card. The Bank is, therefore, held liable for the loss suffered by the Complainant after 07.10.2006. It is admitted that after 07.10.2006, the Complainant suffered loss of Rs.60,000/-. The Opposite Party Bank is, therefore, liable to make payment of Rs.60,000/- to the Complainant.

12. For the foregoing discussion, the Revision Petition stands partly allowed. Impugned orders passed by the District Forum as well as the State Commission are set aside. Opposite Party Bank is directed to pay an amount of Rs.60,000/- to the Petitioner/Complainant with interest @ 6% p.a. from 11.10.2006 till the date of actual payment. The order shall be complied within two months, failing which the Opposite Party shall pay interest @ 9% p.a. ■



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