

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO.1937 OF 1999

(Against the judgment/order dated 07-07-1999 in Complaint
Case No.105/1994 of the District Consumer Forum, Barabanki)

M/s. Consortium Finance Co. Ltd. And others

.....Appellants

Vs.

Sri Pancham Lal

.....Respondent

BEFORE:

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER
HON'BLE MR. RAMPAL SINGH, MEMBER

For the Appellant : Sri Rajesh Chadha, Advocate.

For the Respondent : Sri Sushil Kumar Sharma, Advocate.

Dated : 15-07-2010

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard learned Counsel for both the parties and perused the impugned judgment.

The instant appeal has been filed by the financiers of a jeep No. MP-07/B-8411 of 1993 owned by the respondent's son Sri Laxmi Shankar Yadav who had unfortunately died in an accident on 25-05-1993. Late Sri Laxmi Shankar Yadav had arranged for a loan of Rs.1,00,000/- from the appellants and he himself invested Rs.85,000/- while purchasing the aforesaid jeep. Since the jeep was insured with the Insurance Company (name not disclosed) with comprehensive insurance cover, the appellants in their capacity as the financiers staked their claim over the amount of insurance and received from the Insurance Company a total sum of Rs.1,80,716/-. The appellants in their statement of accounts had shown a sum of Rs.3,796/- as surplus and were and are ready and willing to pay the said sum to late Laxmi Shankar Yadav's legal heir. The aforesaid facts have not been disputed by the respondent Sri Pancham Lal but in so far as the statement of account is concerned he has questioned the propriety of the financiers to with-hold the entire

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money received from the Insurance Company.

In this context, it would be relevant to mention that the appellants extended the loan facility to the deceased on January 20, 1993 and Sri Laxmi Shankar Yadav met with an accident on 25-05-1993 and died. The exact date of the receipt of Rs.1,80,716/- has not been disclosed by the financiers. However, their contention that the date of receipt is not available on the record is just not acceptable. Still these appellants are running their finance company and expected to maintain their records by way of computers. Therefore, it would be very difficult to accept their lame excuse of the date being not available with them. However, in the absence of the financiers having not come with clean hands we are left with no option except to proceed on assumption that the Insurance Company must have settled the dispute within four months from the date of Sri Laxmi Shankar Yadav's sad demise. Accordingly we hold that the appellants might have received the money by the end of September, 1993. If we draw calculations accordingly, the appellants would be entitled to receive their principal amount of Rs.1,00,000/- plus interest at the agreed rate as stipulated in the agreement documents upto September 30, 1993 besides Rs.9,000/- as R.T.O. expenses and Rs.2,892/- as the dues on account of delayed payment. Giving a credit to the deposits made by the deceased upto that date i.e. Rs.20,348/- the balance amount would be refundable to the respondent/complainant who is the only legal heir as stated by him in the first para of his complaint and since no other person has come to question the claim of the respondent, we find no reason to disbelieve him particularly when he has proved the said averment on his affidavit which goes un rebutted. At this juncture, Mr. Rajesh Chadha brings to our notice ⁱⁿ ^{for the} first time that an endeavour was made on behalf of the complainant Sri Pancham Lal to associate his wife i.e. the mother of the deceased and he had also sought for her impleadment. We are not aware whether the impleadment was allowed or not nor either of the two parties' Counsel is in a position to convey anything about it. We may, therefore, observe that if Sri Pancham Lal's wife comes forward and want to claim half of the amount which goes

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to their credit she can be permitted; otherwise Sri Pancham Lal being the father of Late Sri Laxmi Shankar Yadav shall get the whole amount.

In so far as the question of territorial jurisdiction is concerned we find from perusal of the loan agreement that the deceased had recorded his address as Village Tera, Post Kola in District Barabanki and the respondent has also filed his affidavit asserting therein that the appellant no.1 Sri Melcom the agent of M/s. Consortium Finance & Leasing Limited had come to the village to get the agreement deed executed. In this way since the transaction of loan had been entered into district of Barabanki, we do not find any merit in the appellants' contention that the District Consumer Forum, Barabanki was not competent to have entertained the complaint and decided.

With the slight modification pertaining to the calculations of the dues of the appellants we finally dispose of this appeal and affirm the judgment. The parties shall bear their own costs.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


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(RAMPAL SINGH)
MEMBER

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