

Liability of the banker in case of wrongful dishonor of cheque

The person who performs the banking activities such as accepting of deposits, lending money, withdrawing facilities, exchanging of money is known as a banker. In other words, the person who directly related to the banking business is called banker. Banker manages all the activities of a bank.

A banker has the statutory obligation to honor his customer's cheques unless there are valid reasons for refusing payment of the same. In case, he dishonors a cheque, intentionally or by mistake, he is liable to compensate the customer for the loss suffered by him. According, to section 31 of the negotiable instruments act 1881 the banker is liable to compensate the drawer for any loss and damage caused by a default on his part in dishonoring the cheques without sufficient reason. The word loss and damage include:

- The monetary loss suffered by the customers.
- The loss of credit or reputation in the market.

Assessment of loss or damages:

The loss or damage suffered by the customer as a result of dishonoring his cheques by the banker can be assessed in the following ways;

(1) The monetary loss; first is the monetary loss suffered by the customer for dishonoring cheque by the banker. It is the actual loss due to the dishonor of a cheque.

(2) The loss of credit or reputation: Reputation or credit is a foundation of trading business. If the customer lost his credit or reputation, it may result from a loss of a profitable contract or business.

Risks of unwarranted and unjustifiable disclosure:

If a banker discloses information unjustifiable, he shall be liable to his customer and the third party as follows:

Liability to the customer: the customer may be the banker for the damages suffered by him as a result of such disclosure. A substantial amount may be charged if the customer suffered material damage.

Liability to the third party: the banker is, responsible to the third parties also to whom such information is given if the banker furnishes such information as the knowledge that it is false. Or such party relies on the information and suffers losses.

Banker rights: The rights of a banker that the banker can enjoy are as follows:

Rights of general lien: one of the important rights of a banker is the right of general lien. Lien means the right of the creditor to retain the goods or securities own by debtor until the debt due from him is repaid. There are some exceptional cases in which the right of general lien is not applicable. These are:

- Safe custody deposit,
- Documents deposited for a special purpose,
- Security held in trust.

The right of the set off: A banker posses the right of set-off which enables him to combine two accounts in the name of the same customer and to adjust the debit balance in one account with the credit balance in the other.

(3) Banker's right of appropriation: if the customer has more than one account or he has

- taken more than one loan from the banker, the banker has the right to appropriation these loans by the accounts.

(4) Right to charge interest, incidental charges: as a creditor, a banker has the implied right to charge interest on the loans granted to the customer. In the same way, incidental charges like service charges, processing fees, appraisal charges, panel charges may be imposed by the banker to the customer.

(5) Period of limitation: Deposit is repayable on a term and made by the customer but the period limitation for the refund of bank deposit is three years with effect from the date a customer made a demand for his money.