(2004) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

ASHOK LEYLAND LIMITED APPELLANT

Vs

PRABHULAL MARU RESPONDENT

Date of Decision : 07-07-2004

Acts Referred:

Citation : 2004 0 NCDRC 43

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO , S.N.KAPOOR J.

Advocate : PRATAP VENUGOPAL , R.M.PATNAIK , K.N.TRIPATHI

Judgement

1. THE present appeal is filed by M/s. Ashok Leyland against the order 16.11.2001 passed by the State Commission, Orissa Cuttack in Original Complaint No. 45 of 1996, allowing the complaint for deficiency in service.

2. BRIEF facts of the case are : The appellant-Ashok Leyland is the manufacturer and Shri Prabhulal Maru is the respondent No. 1 who purchased Ashok Leyland chassis with engine for a bus being Model "Comet Minor" ALPSV 3/15 WB 142 fitted with HINO 4D engine, 5 speed synchromesh Gear Box, tool kit, without front end structure for Rs. 3,55,478.35 (inclusive of Orissa Sales Tax @ 4%) from respondent No. 2 JL Automotives, Banarpal, District Angul who is the authorized dealer of the appellant. Respondent No. 3 is Cuttack Central Cooperative Bank Ltd., Cuttack who has issued the demand draft in favour of the appellant. Both respondent Nos. 2 and 3 are proforma respondents. The main grievance as alleged by the respondent No. 1 Shri Prabhulal Maru is that respondent No. 2 had wrongly delivered a vehicle passenger chassis and engine wheel base having 126" instead of 142" and also without supplying proper documents such as operators hand book and the warranty card. It is further alleged that when the vehicle was put on the road it started giving various mechanical problems such as high oil consumption, defective clutch and that there was structural defect such as gear box was found to be a 6 plate gear box and differential was found to be high. It is also alleged that although the vehicle was delivered on 2.9.1993, the registration was effected only on 6.12.1993, i.e., after 3 months. Respondent No. 1 claimed Rs. 15,00,175/- under various heads

such as his loan refund interest, loss of livelihood, mental agony, etc. Accepting the version of the complainant/respondent No. 1, the State Commission directed the appellant to refund to the respondent No. 1 a sum of Rs. 3,55,478/- together with interest at the rate of 10% p.a. from the date of delivery till payment and also a sum of Rs. 10,000/- as compensation for mental agony and harassment.

3. WE heard both the parties at length and carefully perused the records. The main issues involved are as follows: (a) Did the appellant supply a chassis with 126" wheel base instead of that of a wheel base of 142" ? In deciding against the appellant, the learned State Commission relied on the fact that on 12.1.1996, the dealer who sold the vehicle (JL Automobiles) himself gave a report that the wheel base was found to be 126". The State Commission was also influenced by certain minor discrepancies in the price quotation dated 1.7.1993 and the sale invoice dated 21.8.1993; and on the fact that though the vehicle was delivered on 2.9.1993, the sale certificate was issued late only on 6.12.1993. The appellant has argued that the letter relied upon by the State Commission is issued 28 months after the delivery of the vehicle and has no relevance. The Certificate of Registration is issued by the Registering Authority only after the vehicle is purchased for inspection before such authority and all particulars including that of the wheel base are verified and entered in the Registration Certificate. The Registration Certificate placed in Annexure A/3 clearly states that the wheel base is 142". The provisions of the Motor Vehicles Act stipulate hang of the body fitted on the chassis with engine cannot exceed 60% of the wheel base. In the instant case, the over hang would be 94" which is 75% of a 126" wheel base and would not have passed inspection before registration of the vehicle. We think that this is clinching evidence. We have no reason to disbelieve the version of the appellant since their records and the Certificate Registration Authority show that the wheel base of the vehicle was 142".

(b) Whether Operators Hand Book and warranty card were supplied; the respondent averred that the appellant did not supply the documents along with the vehicle such as Operators Hand Book, Warranty Card, etc. Appellant stated that the Gate Pass No. 17990 dated 1.9.1993 which clearly specified that the wheel base was 142" and further recorded the supply of all documents vide Gate Pass given by their Regional Sales Office, Bhubaneshwar (Exhibit Annexure A/2) which includes tool kit and doc F.S.F. No. 3566 (free service folder includes warranty card and other documents such as Operators Hand Book) which have been received by the driver of the respondent No. 1. The respondent No. 1 has not produced any evidence on record to prove that his driver never received the documents as mentioned in the Gate Pass. We are unable to appreciate the version of the respondent No. 1 regarding non-supply of the operator''s manual and warranty. The State Commission relied on the letter dated 18.12.1995 of the Regional Service Engineer of the appellant to hold that these documents were not supplied till at least 18.12.1995. The letter states that the matter concerning the documents will be handled by the Company''s Sales Department, who will directly write to respondent No. 1; in any major organization like Ashok Leyland, there are specialized departments like Sales, Engineering, etc. which function with a degree of independence. The Service Engineer cannot be faulted for writing that matters relating to alleged missing documents would be handled by the Sales Department. This letter in no way helps the respondent No. 1. Relying on this letter, the State Commission came to the conclusion that the Gate-Pass which is an unchallenged document cannot be relied upon. We cannot agree with this view.

(c) Is there any evidence that defective vehicle was supplied ? The State Commission relied on the Service Engineer''s letter of 18.12.1995 and the Area Manager''s letter of 30.1.1996 to uphold the contention of the complainant that there were defects in the vehicle supplied. The letter of 18.12.1995, only said that "regarding mechanical problem in your vehicle kindly fix up a date for joint inspection when we can discuss modus operandi of commissioning your vehicle. Kindly note that no warranty could be awarded to you as vehicle has covered 24 months nearly from the date of sale". The appellant has explained this letter to say that the complainant (respondent No. 1) was informed that the warranty had already expired, but still as a matter of goodwill they are prepared to look into the alleged mechanical problems. This letter also does not help the respondent No. 1.

(d) It is averred by respondent No. 1 that the vehicle was plying from 21.12.1993 till 10.7.1995 i.e., for a total of 565 days till it met with the accident on 11.7.1995. The claim is that the vehicle has run for 420 days and it was under repair for 145 days. He further averred that although he earned Rs. 7,41,000/- from plying this vehicle, the total expenses have amounted to Rs. 7,87,835/-. After the accident of the vehicle, it is in the garage and needs Rs. 1.5 lakhs to repair the same. Learned Counsel for the appellant argued that the respondent No. 1 admittedly never brought the vehicle to the workshop of their dealer for carrying out the mandatory free services and hence the onus of establishing the fact that the vehicle was not handled by a person other than the authorized dealer of the appellant is squarely upon the respondent No. 1. Further the respondent No. 1 had not made a single complaint about manufacturing defect during the subsistence of the warranty. Learned Counsel for the appellant stated that the complaint has been filed only to get compensation for the damaged vehicle after it met with the accident. We agree with this version of the appellant and find that there is no manufacturing defect or deficiency of service or unfair trade practice as averred by the respondents.

4. IN view of the above discussion, we set aside the order of the State Commission and allow the appeal and dismiss the complaint. There shall be no order as to costs.

