

(1996) 10 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

BAJAJ AUTO LIMITED, PUNE

APPELLANT

Vs

ANIL KUMAR MOHARANA OF CUTTACK

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Citation : 1997 1 CPJ 569

Hon'ble Judges : P.C.Misra , Mrinalini Padhi J.

Final Decision : Appeal allowed in part

Judgement

1. THIS appeal is directed against the decision of the District Forum, Cuttack in C.D. Case No. 178 of 1994. The complainant's case is that he purchased a Bajaj Chetak Scooter, manufactured by the present appellant, through their authorised dealer who is appellant No. 2 in this appeal. The purchase of the scooter was made on 1.10.93 for a price of Rs. 20,795 /- and the complainant claims to have spent Rs. 2,207/- on purchase of other accessories, insurance and expenses like registration etc. His case is that after the vehicle run for about 645 kilo metres, it developed certain defects for which he had taken the vehicle to the dealer for checking and repair. Some minor repairs were effected at the first instance, but the defects did not get removed. Ultimately in the workshop of appellant No. 2 it was detected that the chassis of the scooter was defective and they changed the defective chassis. The complainant, however, was not satisfied saying that some of the defects still persisted in spite of the change of the chassis. He also complained that after the change of the chassis the colour of the changed chassis did not match with the rest of the body and he claimed for replacement of the vehicle. He filed this case before the District Forum claiming that a new vehicle be replaced in place of the old one and also claimed for compensation on various heads. The present appellants filed a joint show cause denying their liability. They have denied to have been guilty of any deficiency in service inasmuch as their case is that they have rendered the required services whenever the scooter was taken to them for repair. According to them, after the change of the chassis, there has been no defect in the vehicle and, therefore, the prayer for replacement of the entire vehicle is without any basis.

2. THE District Forum after considering the case of both parties has allowed the claim of the complainant directing that a new defect-free vehicle be replaced by the present appellants or in the alternative alongwith all ancillary expenditure incurred by the complainant-respondent together with interest at the rate of 18% per annum from the date of purchase till payment. THE District Forum has also allowed a compensation of Rs. 5000/- for the mental agony and tension suffered by the complainant. Besides the above, a cost of Rs. 1000/- has been awarded against the present appellants. Hence this appeal. The learned Counsel appearing for the appellants strenuously argued that the directions of the District Forum are not supportable for the reason that all defective parts of the scooter having already been replaced, the scooter according to them is in perfect condition. They have also contended that all efforts have been made by the appellants from time to time to attend to the defects pointed out by the complainant and as a matter of fact various parts have been changed including the chassis for providing a defect-free vehicle to the complainant. In such circumstances it has been contended that when the component parts are beverable and replaceable, the direction for replacement of the entire vehicle is unjustified. It has also been contended that the award of compensation is improper in the facts and circumstances of the case.

The learned Counsel for the respondent has supported the judgment of the District Forum. It has been urged by him that the vehicle which was given to the complainant on payment of consideration was a defective vehicle from the very inception inasmuch as one of the main component parts of the vehicle, that is, the chassis of the vehicle was ultimately found to be defective. According to him, a defect-free chassis cannot give rise to various other defects - some might have been detected and others might appear subsequently. He has relied upon a decision of the National Commission in First Appeal Nos. 83 and 90 of 1991 wherein the National Commission in similar circumstances has directed replacement of the vehicle.

3. WE have carefully considered the contentions of both the Counsels in the context of the facts of this case. It is not disputed that the vehicle that was given to the complainant by the present appellants developed defects prematurely. The experts who attended to the vehicle ultimately found that the chassis of the vehicle was defective. The defect in the chassis is not attributable to the improper use by the complainant. In other words, the vehicle was defective from the very inception, that is, on the date of sale of the vehicle. It is no doubt correct that the present appellants attended to the complaint made by the complainant from time to time and effected repairs with the honest intention of giving a defect-free vehicle to the complainant. But the nature of defects was such that the defects could not be rectified until and unless the chassis was changed. It has been argued by the learned Counsel for the appellants that after the change of the chassis, the complainant has been requested on various occasions to bring the scooter for testing as to whether any of the defects previously found persisted or any new defects have developed even after change

of the chassis. It has been contended by the learned Counsel for the respondent that some of the defects still persist and the vehicle was not taken for rectification of those defects because he is entitled to a new defect-free scooter and not interested to get it repaired from time to time. It has also been urged that rectification of the defects which have now cropped up will not be an end of the matter as there is a possibility of further defects developing because of the original defective free-wheels with a defective chassis. Mr. Panda, the learned Counsel for the respondent has relied on a decision of the National Commission in First Appeal Nos. 83 and 90 of 1991, the xerox copy of which has been produced by him. The National Commission in the aforesaid cases (Abhaya Kumar Panda v. M/s. Bajaj Auto Limited), dealt with an identical situation in relation to a Bajaj Auto Trailer I (1992) C.P.J. P.88. In that case, the chassis was found to be defective and had to be changed apart from other repairs effected from time to time. The National Commission was of the view that the defective chassis amounts to major structural manufacturing defect which should have been detected before it was marketed. The National Commission has also observed that the manufacturer should have replaced the vehicle soon after such a major defect was found even before the asking of it by the customer. In such circumstances, the National Commission directed for replacement of the vehicle instead of allowing the same to be repaired further. In the aforesaid circumstances, we are of the view that the analysis and the decision of the National Commission in the aforesaid case squarely covers the identical situation in this case. The learned Counsel for the appellants further wanted to draw out a distinction between these two cases saying that that was a goods carrying vehicle whereas the present one is merely a scooter which is not required to carry load besides that of the rider. According to him, the consideration of a goods carrying vehicle should be different from a vehicle of the present nature. We are, however, unable to accept the aforesaid argument for the reason that the chassis in any automobile is a major part which binds and controls the performance of the vehicle. The defective chassis in any motor vehicle is evidently a major structural defect. If a major structural defect existed on the date of sale, the customer would evidently be entitled to replacement of a vehicle. It is not a case of the nature where a small component part of a machinery goes out of order or is found to be defective be it manufacturing defect or a defect arising out of other reasons. We, therefore, confirm the directions of the District Forum that the complainant- respondent would be entitled to replacement of a new vehicle after due testing with a certificate that it is free from defects. The new vehicle if supplied would naturally be covered by a warrantee to the operative condition of the delivery of such vehicle. In the alternative, if the appellants do not replace the scooter by a new one as directed, they would be liable to return the sum of Rs. 23.000/- with interest as directed by the District Forum.

4. THE District Forum in addition to the aforesaid direction has also awarded a compensation of Rs. 5000/- for the mental agony suffered by the complainant. In

the present case what we find is that the appellants have taken care to attend to the vehicle from time to time whenever the defects were reported to them. In fact they had made sincere attempts to make the vehicle defect-free by changing parts and lastly by changing the chassis thereof. It is also a fact that the vehicle was received after the change of the chassis by the complainant and it was not taken to the appellants thereafter if further defects persisted even after the change of the chassis. Taking all these circumstances into consideration, we do not think it proper to award compensation in favour of the complainant. We, therefore, quash that part of the order of the District Forum awarding compensation of Rs. 5000/-. We, however, confirm the order as to costs awarded by the District Forum. This order be complied with within a month from the date of receipt of the order. Appeal allowed in part.