(2008) 03 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Ceat Limited APPELLANT

Vs

DHIMAN EARTH DEVELOPER COMPANY RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Citation : 2008 4 CPJ 153

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Judgement

1. -THIS appeal has been directed by opposite party No. 3 Ceat Limited against order dated 18. 2. 2008 passed by Consumer Disputes Redressal Forum-I, U. T. Chandigarh (hereinafter to be referred as District Consumer Forum), vide which complaint of respondent Dhiman Earth Developer Company (complainant) was accepted with costs of Rs. 5,000 and appellant along with respondent Nos. 1 and 2 M/s. Krishna Automobiles and JCB India Limited were directed to refund the amount of Rs. 30,000 with penal interest @ 12% from the date of filing of complaint i. e. 11. 9. 2006 till actual payment.

2. BRIEFLY stated the facts are that M/s. Dhiman Earth Developer Company-respondent (complainant) had purchased JCB machine by raising loan from Citi Finance Corporation of India against monthly instalments of Rs. 45,503 each from JCB India Ltd.-respondent No. 2 through its dealer i. e. M/s. Krishna Automobiles-respondent No. 1 vide bill dated 16. 10. 2004 for a sum of Rs. 17,73,680. Krishna Automobiles had issued the bill of JCB Ltd. When the said machine put to use then the tyres of the said machine went out of order under warranty period and the complainant approached M/s. Krishna Automobiles respondent No. 1 on 11. 12. 2004 and 3. 1. 2005 for replacement of tyres but despite repeated requests Krishna Automobiles and JCB India Ltd. did not replace the tyres and auto part of the machine. It was next averred that complainant was compelled to purchase tyres from its own funds vide bill dated 25. 1. 2005 for Rs. 30,000 so that JCB could be put to use. The tyres were manufactured by the appellant-Ceat Limited and as such all the three are liable to refund the amount of tyres.

Respondent No. 2 namely JCB in its reply stated that the warranty was for one year or 2000 hours of work from the date of installation of machine whichever was earlier but the complaint had been filed on or after 15. 6. 2006, hence, was not maintainable. The other objections taken by respondents Nos. 1 and 2 were the same and stated that there was no deficiency on their part and further the complaint of complainant regarding tyres of the machine was forwarded to Ceat Limited. They next stated that the complainant was advised to get fitted 3600 PSI AVP fitted on ROD side of BKT Ram vide letter dated 17. 10. 2004 but the same was neither supplied by the company, nor, its price had ever been included in the price of the machine and due to non-fitting of this part, complainant did not suffer any loss.

3. APPELLANT in its written reply stated that on receipt of intimation from Krishna Automobiles, its technical service engineer had visited the spot and examined two tyres and found that there was no manufacturing defect in it as the said tyres had fallen due to ''impact break'' which was a technical terminology used in tyres trade to describe a failure arising on account of over inflated tyre hitting with force an external object and tread cut/repair which was a technical terminology used in the trade to describe a failure arising on account of sharp objects and entrapped stones in pattern grooves respectively resulting into damage/failure of tyres and finding of the said engineer was communicated to Krishna Automobiles. It denied further allegations and stated that there was no deficiency on its part and complaint should be dismissed. Parties adduced their evidence by way of affidavits.

4. AFTER hearing Counsel for the parties, District Consumer Forum vide order dated 18. 2. 2008 accepted the complaint with costs of Rs. 5,000 as stated in the earlier part of the judgment. Aggrieved by the said order, OP No. 2 i. e. Ceat Limited has filed the present appeal. We have heard Counsel for appellant Mr. Sanjay Judge and carefully gone through the file.

5. IT is true that Dhiman Earth Developer Company had purchased JCB machine which contained tyres manufactured by Ceat Limited. The said firm is doing commercial activities. However, break out of the tyres had taken place during the warranty period of one year, so, even if complainant firm is carrying on commercial activities, complaint is maintainable in view of the authority of Hon''ble National Commission titled Hindustan Power Plus Limited v. Santosh Drillers and Ors. decided on 31. 8. 2007 and reported as IV (2007) CPJ 161 (NC). To the same effect is authority of National Commission in East India Construction Co. and Anr. v. Modern Consultancy Services and Ors. , II (2006) CPJ 289 (NC).

6. IT is admitted by respondent Nos. 1 and 2 in their written reply that they had received a complaint from the complainant about the damage caused to the tyres and they had forwarded the same to appellant for removal of the grievance. The complainant has placed on record report from Saini Tyre Puncture Services, opposite Petrol Pump, Raipur Rani, Panchkula which is Annexure R-1. In this

report it is clearly mentioned that tyres had manufacturing defect. It is true that report had been given by a person who is only a repairer of tyre punctures but certainly due to his experience he could look into the quality of tyre and could point out if there were manufacturing defects. Appellant had repudiated the claim on flimsy grounds that defect in the tyres occurred due to impact break tread cut/ repair because if the tyres had been properly manufactured to suit difficult terrain or rough terrain then it would not have impact break. To maintain the reputation M/s. Ceat Limited should not have resorted to such technical reasons to refuse the refund of amount. It is difficult to imagine that the tyres manufactured by Ceat Limited had broken or went out of order within warranty period of one year i. e. after a period of 2 months of its purchase because complainant had purchased new tyres vide bill dated 25. 1. 2005 for Rs. 30,000 while JCB machine was purchased on 16. 10. 2004. In our opinion appellant or respondent Nos. 1 and 2 had rejected the claim only on flimsy grounds. In fact they should have replaced the tyres or refunded the amount.

We concur with the reasoning given by the District Consumer Forum and hold that there is no force in the appeal. Consequently, it is dismissed in limine.

7. COPIES of this order be communicated to the parties, free of charge. Appeal dismissed.