
(1991) 06 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

CHAIRMAN, AJARA URBAN CO-OPERATIVE BANK LTD.

APPELLANT

Vs

V.J.And SONS

RESPONDENT

Date of Decision : 07-06-1991

Acts Referred:

Citation : 1993 2 CPJ 974

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Final Decision : Complaint allowed

Judgement

1. THE Complainant a Co-operative Bank, presented this complaint against the opposite parties claiming replacement of the Ambassador Car or its price which the complainant purchased on 25.10.1989. Admitted facts are that a new Diesel Ambassador Car bearing No. MH-90/84 was purchased by the complainant from M/s. V.J. & Sons, Kolhapour for a consideration of Rs. 1,63,515/- which has been manufactured by M/s. Hindustan Motors Ltd. It is also admitted by the opposite parties that the said car required immediate repairs and was sent to the garage of opposite party No. 1 for repairs during the month of December, 1989 and January, 1990. It is also an admitted fact that as per the entries on the job cards, the said car was repaired accordingly.

2. THE allegations made by the complainant in the present case, are that the car was purchased for the use of the Bank. An amount of Rs. 1,63,515/- was paid on 25.10.1989 vide Cheque No. 733471. It is further alleged that the said car was delivered by M/s. V.J. Sons, Kolhapur to the complainant on 9.11.89 when it was showing 2039 kms. of running. According to the complainant, till the said car registered running of about 14000 kms. it was not running properly and failed to perform on many occasions. THE complainant, therefore, was required to take the said car to the garage of opposite party No. 1 for repairs. THE main allegations of the complainant are that from the date of delivery of the car to the complainant, within a period of 108 days, till about 16th March, 1990, the car was required to be kept with opposite party No. 1, the Dealer for 36 days for repairs. It is further alleged that the car was actually used by the complainant for

10,000 kms. and the car was used by the opposite party No. 1 whilst it was in for repairs, for about 4000 kms. It is lastly alleged that the engine of the said car was required to be overhauled by the opposite party No. 1 and the overhaul required 20 days and they then informed the complainant by a letter dt. 31.3.1990 to take delivery of the car. It is, therefore, alleged by the complainant that the defective motor vehicle was supplied to the complainant by the opposite parties which failed to give a performance which one would expect from a new motor car. Due to the failure of the said car to give a normal performance which any common consumer would expect from a new car; complainant does not want to take back the vehicle from the garage of the opposite party No. 1 and claims either replacement of the vehicle with a new vehicle of similar description or refund of the price with interest at the prevalent Bank rate along with the compensation. Both the opposite parties filed their written version and denied the allegations. Apart from the denial that the motor vehicle was defective, the opposite parties also challenged the jurisdiction of this Commission to enquire into this complaint

Both the parties filed their respective affidavits and also argued out the case through their respective agents. The complainant was heard through Shri S.V. Pisal, Vice Chairman, Pune Grahak Panchayat. The Opposite Party No. 1 was absent at the time of hearing although noticed. Opposite Party No. 2 was heard through Shri A.I. Talegawkar, Advocate.

3. AFTER hearing the parties, following points arise for our consideration : - (i) Whether the complainant is the "consumer" of the motor vehicle in question? (ii) Whether the diesel Ambassador Car in question was having a "defect" within the meaning of Consumer Protection Act and if yes, who is liable to make good the loss of complainant? (iii) Whether the complainant is entitled for compensation as claimed in this complaint? (iv) Whether this Commission has jurisdiction to decide this complaint ?

Our findings in answer to the issues (i) to (iv) are in the affirmative for the following reasons : - Reasons : In view of the admitted fact that the diesel motor car in question was purchased by the complainant-Bank for consideration for its use, complainant-Bank is a "consumer" within the meaning of the Consumer Protection Act. The Motor Vehicle is "goods" being movable property under the definition of "goods" provided in Sale of Goods Act. Shri Talegawkar, Advocate for Opposite Party No. 1 tried to vainly argue that the complainant cannot be a "consumer" of the motor car since it has been purchased for commercial use. Reliance was placed on a decision of the National Commission in the case of Western India State Motors v. Sobhanmal Meena and others, dated 8.11.1989 in 1st Appeal No. 12/89. In that case, the car was purchased for running taxi. In the present case, the motor vehicle has been purchased for the use of the Officers of the Bank and as such it cannot be said that it was purchased for commercial use. Under these circumstances, we find that the complainant is the consumer and, therefore, is, competent to file this Complaint before this

4. IT is found from the original job cards placed on record in relation to the motor vehicle in question by the Opposite Party No. 1 that on 10.11.89 the said car was required for repairs for welding steering rod etc. The meter reading recorded in the job card is 2010 kms. IT is pertinent to note that the motor was delivered on 9.11.89 and on the next day, it required welding of the steering rod as can be seen from the Job Card No. 004616. Thereafter, vide Job Card Nos. 004650, 005084, 006106, 6106, 006162, 006197, 006381, 006396, 006688, 005483 and 007238, various repairs have been carried out in relation to the motor vehicle in question. The last job card 007238 dated 15.3.90 bears a red endorsement on it. IT indicates that the engine was opened and the piston liners were found defective. The vehicle seems to have been retained in the garage from 15.3.90 to 31.3.90. The aforesaid job cards were placed on record by Opposite Party No. 1, M/s. V.J. & Sons. These job-cards depict the defective nature of the motor car in question. The repairs were made as they were absolutely necessary to make the car roadworthy. This evidence is enough to prove the allegations in the complaint. The allegations made in the Complaint are supported by an affidavit dated 17.11.1990 sworn by the Chairman of the complainant-Bank. The job cards which describe in detail the repairs carried out to the vehicle in question leave no doubt in our mind that the vehicle supplied to the complainant was defective. The written version filed by opposite parties denying the allegations made by the complainant about the defective nature to the motor vehicle, thus holds no water. The denial of the facts apparent on the face of record appears to be outrageous. In view of the numerous defective parts in the motor vehicle, they were required to be removed within a period of three months. The repairs carried out to the vehicle in question are indicative of the defects in the goods manufactured by the Opposite Party No. 2 and sold to the complainant through Opposite Party No. 1. Under the Scheme of Consumer Protection Act, the definition of the word "Defect" is provided under Section 2(f). IT is reproduced below : - "Defect" means any fault, imperfection or shortcoming in quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner whatsoever in relation to any goods." The aforesaid definition clearly implies that any fault, imperfection shortcoming in the quality as is claimed by the trader in relation to his goods. Admittedly M/s. Hindustan Motors Ltd. is the manufacturer of the Diesel Ambassador Car in question. IT is common knowledge that several leading newspapers and magazines display attractive advertisements of Ambassador Cars. Advertisement of the "goods" itself is a claim in relation to the quality potency, or standard of a "goods" made by the trader. Under that Section 2(q) of the Consumer Protection Act, the definition of "trader" is provided. "Trader" in relation to any goods means a person who sells, distributes, any goods for sale and includes the manufacturer thereof. Thus, M/ S. Hindustan Motors Ltd., the Opposite Party No. 2 is the trader in relation to the defective goods sold to the complainant. Although aware of the

defective nature of the motor vehicle in question, M/s. Hindustan Motors Ltd., in its written version, had the audacity to deny the allegations of quality and performance and the purchase of the motor vehicle in question. On perusal of the written version of the Opposite Party No. 2, the denial of even the plain facts alleged by the complainant is not only outrageous but an indifferent and very casual approach of the manufacturer towards the genuine grievances of a valued consumer of its goods. Further we find from the written version of the Opposite Party No. 2 that it contains irrelevant submissions as regards the period of warranty just to detract from the main issues of facts alleged by the complainant. We, therefore, find that the Opposite Party No. 2 has miserably failed in its submission as regards the nature of the vehicle supplied to the complainant. From the written version of the Opposite Party No. 1, we find that although they have denied the allegations of the complainant, yet it was very fair on their part to place on record the original job cards which prove the allegations of the complainant and expose the claim of the Opposite Party No. 2 in relation to the motor car in question. It seems that as a dealer of M/s. Hindustan Motors Ltd., Opposite Party No. 1 had to fall in line with Opposite Party No. 2 for purposes of denial of the claim of the complainant. It further seems that the dealer is constantly under pressure from the manufacturer to support his cause because of apprehension of adverse effects on his dealership. Even otherwise, for the manufacture of "defective" goods the "trader" is liable to make good the loss of the consumer if he is put to loss or injury as a result of his negligence in manufacturing goods having defect and not the dealer. Under the Consumer Protection Act, there is definition of "manufacturer" in Section 2(1)(i). The "manufacturer" means a person who manufactures any goods or parts thereof. Admittedly, the Opposite Party No. 2, M/s. Hindustan Motors Ltd. is the manufacturer of the motor vehicle in question. Considering the allegations of the complainant which is supported by affidavit coupled with job cards and other correspondence on record, we are fully convinced that the motor vehicle in question was defective "goods", having many faults and imperfections in the quality, potency and standard which is claimed by the trader i.e. M/s. Hindustan Motors Ltd. in relation to the manufacture of Ambassador Car. We are, therefore, of the opinion that the complainant has proved the allegations in this complaint as regards the defect in the motor vehicle supplied by the Opposite Party No. 1 and manufactured by M/s. Hindustan Motors Ltd. In view of the proved defect in the motor vehicle in question and the loss or injury caused to the complainant; the manufacturer is liable to compensate it. The complainant-Bank is a Cooperative Institution and not an individual concern. The vehicle was purchased for the use of the officials of the Bank and due to the defect in the vehicle, it could not be used for the purpose for which it was purchased by the complainant. The motor vehicle is lying in the garage of the Opposite Party No. 1 since March, 1990 and the complainant could not use it because of the defective nature of the vehicle. The complainant had informed the opposite parties through their Advocate on 23.4.1990 that the car was not of the quality which ought to have been supplied to a customer and claimed the replacement of new car or return of

price with interest. The opposite party admitted vide their reply dated 30.4.1990 that the car was in garage for 20 days but denied the claim. Under these circumstances, we have to hold that the Opposite Party No. 2, M/s. Hindustan Motors Ltd. is liable to compensate the loss of the complainant. The complainant has claimed replacement of the motor vehicle or refund of its price with interest at bank rate.

5. SINCE on the basis of the material available on record we have reached the finding that the diesel Ambassador Car in this case was having defects in its manufacture and the Opposite Party No. 2, M/s. Hindustan Motors Ltd., the manufacturer, is liable to compensate the loss of the complainant. The complainant has alleged in his complaint and also proved from the documentary and other evidence on record that, from the date of the delivery of the vehicle, the said motor vehicle was under repairs in the garage of the Opposite Party No. 1 for 36 days out of 108 days and that too, during the warranty period. We have also found from the job cards that on the day following its delivery, the motor vehicle was required to be taken to the garage for repairs having major defects in the steering rod which required welding. Moreover, it is an admitted fact that the engine of the said Ambassador Car was required to be overhauled. It is clearly mentioned in the red ink on job card No. 007238 that the engine was opened and piston liners were found to be overheating, caused by lack of coolant. The letter dated 31.3.90 from Ghatge Patil Automobiles Ltd., addressed to the complainant shows that the engine was replaced with all piston, ring set, cylinder set, cyan. bearing and sleeving. The details of the dates and the repairs carried out to the said car are catalogued in the job cards on record. The complainant, therefore, could not use the new car for the purpose for which it was purchased. The complainant has claimed the compensation for the inconvenience caused to the Bank at Rs. 6850.70 ps. In addition to this, the Bank has also claimed Rs. 27261.50 ps. for the expenses caused to the management due to the absence of the vehicle.

6. IT is apparent in this case that the complainant could not effectively use the motor vehicle in question after its purchase due to the fact that it needed major repairs. We can understand that for minor repairs, the motor car is taken to the garage for a day or two. But when a brand new car was required to be sent to the garage for repairs requiring the welding of the steering rod and engine overhauling and several other repairs, the only reasonable inference which can be drawn is that the car was defective and could not be used by the complainant. We are fully convinced that the defect in the manufacture of the diesel Ambassador Car was latent. IT, therefore, clearly appears that the said vehicle sold to the complainant did not conform to the standard of a new car and therefore, the loss and injury caused to the complainant is apparent. The complainant stated in the complaint the figures of compensation on account of loss to the management and the mental injury. Taking into consideration the loss caused to the complainant continuously from the date of its purchase till the date of this complaint for non use of the car, it would meet the ends of justice if we

quantify the entire amount of compensation on all counts to Rs. 10,000/- to be paid to the complainant by M/s. Hindustan Motors Ltd., Opposite Party No. 2. During the proceedings of this complaint cost of Rs. 500/- was levied on the Opposite Party No. 2 for seeking adjournment to file the written statement. The said costs are also not paid by the Opposite Party No, 2. The complainant is, therefore, entitled to get back Rs. 500/- towards the adjournment costs. The present complaint was filed by the complainant with the assistance of Akhil Bharatiya Grahak Panchayat, Pune. Shri S.V. Pisal, Vice Chairman of the Akhil Bharatiya Grahak Panchayat, Pune rendered the necessary assistance to this Commission. We, therefore, would like to award the costs of Rs. 2500/- to the Akhil Bharatiya Grahak Panchayat, Pune to be paid by the Opposite Party No. 2.

Although the Opposite Party No. 1, Dealer is impleaded as a party to this complaint, we find that he is not responsible for the manufacturing defect. The Opposite Party No. 1 carried out the repairs as were needed during the warranty period and as per the directions of Opposite Party No. 2. We, therefore, find that the dealer, Opposite Party No. 1 is not liable at all for the loss of Opposite Party No. 2. In the result, we pass the following order : - ORDER

7. THE opposite party No. 2, M/s. Hindustan Motors Ltd. is hereby directed to replace the new diesel Ambassador Car of the similar description free from any defect to the complainant through Opposite Party No. 1 in lieu of the motor vehicle sold to the complainant bearing engine No. 6E/B/ 0419,04, Chassis 111-600254 having registration No. MH-09-84 within a month from the receipt of this order. THE said car lying in the garage of Opposite Party No. 1 be taken back by M/s. Hindustan Motors Ltd. at their own expense. While giving the delivery of the replaced motor vehicle to the complainant the amount of money Rs. 1,63,513 lying with Opposite Party No. 1 be adjusted towards the price of new replaced motor vehicle. If M/s. Hindustan Motors Ltd. fails to replace the new diesel Ambassador Car to the complainant, within the given time, the amount of Rs. 1,63,515/- shall carry interest at the rate of Rs. 18% p.a. from 25.10.1989 till the replacement of new diesel Ambassador Car. The Opposite Party No. 1 is directed to adjust the amount of Rs. 1,63,515/- towards the price of the replaced new diesel ambassador car to the complainant. We make it clear here that the price of the car given in replacement of the defective car supplied earlier will be the same i.e. Rs. 1,63,515/- (the rate prevailing on 25.10.1989).

8. THE Opposite Party No. 2 M/s. Hindustan Motors Ltd. shall pay a consolidated amount of Rs. 5,000/- towards the compensation to the complainant plus Rs. 500/- as arrears of the costs. M/s. Hindustan Motors Ltd. is also directed to pay Rs. 2,500/- (two thousand five hundred) as the cost of litigation to the Akhil Bharatiya Grahak Panchayat, Pune. THE amount of compensation and the costs be paid within 30 days from the receipt of this order failing which the amount of compensation shall carry interest at the rate of Rs. 18% p.a. after one month from the date of this order till its realization. Complaint allowed.