
(2015) 07 NCDRC CK 0125

In the National Consumer Disputes Redressal Commission

Case No : 4299 of 2007

**CHHATISGARH RAJYA BEEJ EVAM KRISHI?VIKAS NIGAM Vs JEEVAN LAL
VERMA & ANOTHER**

Date of Decision : 06-07-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 07 NCDRC CK 0125

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : R.K. Bhawnani, Bineesh K, K. Anandani

Judgement

1. These two Revision Petitions by HMT Ltd. and Chhattisgarh Rajya Beej Evam Krishi Vikas Nigam, respectively the manufacturer and dealer of tractor in question, are directed against order dated 29.9.2007 passed by the Chhattisgarh State Consumer Disputes Redressal Commission, Gandhi Chowk, Kalibadi, Raipur (for short "the State Commission"), in Appeal No.512/2006. By the impugned order, the State Commission, while affirming the finding recorded by the District Consumer Disputes Redressal Forum, Durg (for short "the District Forum"), in its order dated 7.8.2006 in Case No.385/1999 that the tractor in question did suffer from manufacturing defects, has modified the said order and has directed the Petitioners herein to jointly and severally refund to the Respondent/Complainant a sum of Rs.2,00,385/- along with interest @ 10% p.a. from the date of filing of the Complaint till realization of the amount awarded. A sum of Rs.5,000/- has also been awarded in favour of the Complainant as cost of litigation.

2. Since both the Revision Petitions arise out of a common order, these are being disposed of by this order.

3. Succinctly put, the material facts giving rise to the present Revision Petition are : that on 15.6.1998, the Complainant purchased the tractor in question from the dealer for a total consideration of Rs.2,33,135/-. Out of the said amount, a subsidy of Rs.30,000/- was received by him from the dealer. It appears that

within 2 weeks of the purchase of the tractor, the Complainant experienced certain problems in its running, which were duly attended to by the dealer by repairing its fuel pump. Again on 4.8.1998, the Complainant faced problems in the running of the tractor, in as much as it was not getting the desired pick up and the consumption of diesel was also excessive. As per the job card dated 10.10.1998, tractor required extensive repairs, including repairs in the engine, cylinder piston ring as well as repairs in the steering, etc. At this juncture, it may be worthwhile note that even prior to 10.10.1998, as per the job card dated 4.8.1998 placed before us, the engine had already been repaired twice. Again, on 23.12.1998, the tractor had to be taken to the workshop, as there was excessive consumption of diesel. It appears from the job cards that the complaints in respect of the vehicle, were attended to by mechanic John Antoni. Faced with the situation, the Complainant filed Complaint against the Petitioners in the District Forum, inter alia , praying for direction to them to replace the tractor with a new one and in the alternative, refund the price of the Tractor along with interest @ 16% p.a.

as also compensation for the harassment caused to him. Upon consideration of the material on record, the District Forum came to the conclusion that the tractor was suffering from inherent defects right from the beginning and despite its repairs, it was not functioning properly. Accordingly, the District Forum allowed the Complaint with a direction to both the Petitioners herein to severally and jointly provide a fresh tractor to the Complainant after rectifying all the defects within one month or to pay the price of the tractor, amounting to Rs.2,00,385/-, along with interest @ 18% p.a. from 15.6.1998. The District Forum also awarded compensation of Rs.10,000/- along with litigation expenses of Rs.2,000/-.

4. Being aggrieved, both the Petitioners took the matter in independent Appeals to the State Commission. As noted above, the State Commission, having dismissed their Appeals with slight modification with regard to the payment of compensation, they are before us in these two Revision Petitions.

5. We have heard learned counsel for the parties and perused the documents on record, including the job cards for the repairs carried out at the workshop of the dealer from time to time.

6. The main thrust of the submission of learned counsel appearing for the Petitioners is that since the tractor was not taken to the workshop for periodical servicing, due after fixed running hours, mentioned in the warranty card, the tractor suffered from the afore-noted defects. It is asserted that but for the said lapse on the part of the Complainant, there was no manufacturing defect in the tractor. Per contra , learned counsel appearing for the Complainant has submitted that the tractor was taken to the dealer's workshop for servicing within the due period and it has been his consistent stand that the hours mentioned in the job cards were not correct, for the simple reason that even if the tractor was run for 24 hours, it would not have covered the hours as reflected in the hours meter.

7. Having perused the documents on record, in particular the job cards pertaining to the vehicle, in our opinion, both the Revision Petitions are without any merit.

8. While affirming the order passed by the District Forum, the State Commission has elaborately dealt with the self same plea of the Respondents and in para-19 of its order, it has rejected the said plea raised on behalf of the Petitioners. Even otherwise, in our view, if the Complainant had breached the terms of the warranty, the Petitioners were not under any obligation to repair it without charging at least the cost of the parts. We may note that in their letter, dated 18.8.1999, while responding to letter dated 14.6.1999 issued by the Deputy Director of Agriculture, the Petitioners had informed the Complainant that since there was lack of maintenance on his part in not getting the tractor serviced at the due time, he would be liable to pay the cost of the parts though they would not charge any amount towards labour. Admittedly, nothing was charged from the Complainant even for the replaced parts. Be that as it may, we are of the opinion that having regard to the fact that as per the job card, the tractor's engine, a vital part in a vehicle had been repaired, two times within a period of two months of its purchase, is manifestation of the charge of the Complainant that the tractor suffered from inherent manufacturing defects.

9. In that view of the matter, we do not find any jurisdictional error in the finding returned by the lower Fora that the tractor did suffer from manufacturing defects. Nevertheless, we feel that the rate of interest awarded by the lower Fora is on the higher side. Accordingly, while affirming the impugned order on award of compensation, we are of the view that the interests of justice would be subserved if the interest awarded by the State Commission is reduced from 10% to 6% p.a. for the period indicated in the order. We order accordingly.

10. In so far as the Revision Petition preferred by the dealer is concerned, in our view, only being the dealer of HMT Ltd., it had no significant role to play in so far as the manufacturing defects in the tractor were concerned. Accordingly, we exonerate the dealer in so far as the question of payment of compensation is concerned. It is pointed out that as per the information on record, the tractor in question was in the custody of the dealer. If that be so, the same shall be returned by it to HMT Ltd. within 4 weeks from the date of receipt of a copy of this order.

11. It is pointed out that 50% of the principal amount as awarded by the State Commission has been deposited by each of the petitioners in the District Forum. If that be so, the amount(s) deposited along with interest, if any, accrued thereon shall now be released to the Complainant on his moving appropriate application before the District Forum. If there is any shortfall in the amount to be paid in terms of the impugned order, as modified by us, the same shall be paid to the Complainant directly by HMT Ltd. within 6 weeks to the date of receipt of copy of this order, failing which the said amount shall carry interest @ 9% from the date of this order till the date of actual payment.

12. In the result, both the Revision Petitions are partly allowed, to the extent indicated above, with no order as to costs.