

(2014) 09 NCDRC CK 0113

In the National Consumer Disputes Redressal Commission

Commercial Officer M/S. Piaggio Greaves Vehicle Pvt. Ltd.	APPELLANT
Vs	
Ramakanta Samal	RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 575 : 2014 4 CPJ 252

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : PARTHA SIL , A.V.RANGAM

Judgement

1. THIS Revision Petition has been filed by the Petitioner against the order dated 3.12.2007 passed by Learned State Commission in C.D. Appeal No. 172 of 2002 - Ramakanta Samal VS. M/s. Baba Motors & Ors., by which while allowing appeal, order of the District Forum dismissing complaint was set aside and Opposite Parties were jointly and severally held liable to pay Rs. 1,50,000/- alongwith Rs. 5,000/- as cost to the appellant.

2. BRIEF facts of the case are that Complainant - Respondent No. 1 purchased one three -Wheeler diesel Auto from Opposite Party No. 1 -Respondent No. 3 for Rs. 98,400/- on 19.3.1999. Opposite Party No. 2 & 3 -Petitioners are manufacturers and Opposite Party No. 4 -Respondent No. 2 sanctioned loan to the Complainant for purchase of three -Wheeler. It was further alleged that Opposite Party No. 1 charged Rs. 9,000/- for supplying accessories, registration, insurance, etc. but these services were not provided. It was, further, submitted that from the date of purchase of the vehicle, it was giving troubles during the period of warranty and Opposite Party No. 1 charged cost of spare parts even during period of warranty. Service Engineer of Opposite Party No. 2 & 3 pointed out manufacturing defects and these defects were brought to the notice of Opposite Party No. 2 & 3 but they were not rectified. It was, further, submitted that vehicle was examined by REC, Rourkela and found that vehicle was not road -worthy. Alleging deficiency on the part of Opposite Party, Complainant filed complaint before the District Forum. Opposite Party No. 1 resisted complaint, denied allegation of excess receipt of Rs. 9,000/- . It was, further, submitted that

Complainant availed services as per job cards but did not avail service on 28.6.99 and 28.7.99 and, thus, violated the conditions of warranty and prayed for dismissal of complaint. Opposite Party No. 2 & 3 resisted complaint and denied allegations and supported Opposite Party No. 1. It was, further, submitted that vehicle is released from Company "s workshop after being tested by various engineers and prayed for dismissal of complaint. Opposite Party No. 4 submitted that loan was sanctioned to the Complainant and prayed for dismissal of complaint. Learned District Forum after hearing all the parties, dismissed the complaint. Appeal filed by the Complainant was allowed by Learned State Commission vide impugned order against which this Revision Petition has been filed.

3. NONE appeared for Respondent No. 1 but received written submissions from him. Respondent No. 3 was proceeded exparte. Heard Learned Counsel for the Petitioner & Respondent No. 2 and perused record. Learned Counsel for the Petitioner submitted that without any proof of manufacturing defects and in spite of breach of conditions of warranty by the Complainant, Learned State Commission committed error in allowing appeal and order passed by Learned District Forum was in accordance with Law, hence, Revision Petition be allowed and impugned order be set aside. Learned Counsel for Respondent No. 2 also supported the Petitioner. Perusal of record reveals that Complainant purchased vehicle from Opposite Party No. 1, manufactured by Opposite Party No. 2 & 3. Warranty conditions runs as under: - ""LIMITATIONS OF WARRANTY: The Warranty will be null and void: a)If any of free/paid services has not been availed off and specified mileage or time is passed if the vehicle is not serviced at every interval of 3000 kms or 30 days whichever is earlier by Authorised Dealer after Service Coupons are exhausted. b)If the Ownership of the vehicle has been changed. c)If any part/assembly of 3 -wheeler is tampered/altered, repaired or replaced at unauthorized workshop or by unauthorized mechanics. ""

Perusal of record, further, reveals that Complainant has not availed 4th and 6th service whereas as per conditions of the warranty, if any, free services have not been availed of, warranty will be null & void. Perusal of job cards also reveals that 3rd service has been availed at 4500 kms whereas it should have been availed between 3500 to 4000 kms. Complainant in letter dated 14.12.1999 addressed to Party No. 3, mentioned that huge amount has been spent towards purchase of various components and outside repairing almost every now and then during the period of warranty. Again, in para No. 9 of this letter, he has admitted that he had to get relevant defects corrected outside. In para No. 10 of this letter, he has admitted that 4th & 6th free service has not been availed of because of so many defects. As per terms and conditions of warranty, the warranty will be null & void if any part/assembly is repaired or replaced at unauthorized workshop or by unauthorized mechanics. As it is admitted case of the Complainant that he did not avail two free services and got it repaired outside no. of times and as per the report of Regional Transport Office: Rourkela,

dated 21.1.2000, the break pipe from the master cylinder was found to be broken and was welded in different places and this report, further, reveals that repairs have been carried out in the vehicle which must be outside the workshop of Opposite Parties. Warranty given by Opposite Party stands null & void and in such circumstances, Complainant is not entitled to any compensation on the ground of deficiency in service.

4. AS far manufacturing defect is concerned, Learned District Forum in its order observed that Complainant prayed for examination of the vehicle by experts and Opposite Party agreed for getting it tested by appropriate agency as approved under the Act but Complainant refused to accept it and Complainant managed the test report from Regional Engineering College, Rourkela. Learned District Forum also observed that as no direction was given to the Complainant to get it examined from REC, Rourkela, report was neither accepted nor considered.

5. AS Complainant did not get it tested from appropriate testing agency, merely on the basis of allegations of Complainant, no manufacturing defect can be presumed in the vehicle on the basis of report of REC, Rourkela, which was obtained by Complainant without any direction from the District Forum. Perusal of job card, further, reveals that at every time, Complainant received delivery of three -wheeler after it was duly repaired. At no point of time, he raised any objection regarding satisfactory service of three -wheeler and Learned District Forum rightly dismissed the complaint.

6. LEARNED State Commission in para No. 6 of the impugned order observed that Complainant wrote several letters to Opposite Party but Complainant has placed only one letter dated 21.2.2000 on record and in such circumstances, it cannot be inferred that Complainant wrote many letters to Opposite Parties regarding manufacturing defects in three -wheeler. Learned State Commission further observed in para No. 7 of the impugned order that in view of reports of the experts, price is to be refunded instead of replacement. As so called report of the expert is not in accordance with directions of District Forum and as Complainant had to get it examined through appropriate testing agency, Learned State Commission committed error in placing reliance on the report of Prof. S.K. Nanda, REC, Rourkela and in allowing complaint and in such circumstances, Revision Petition is to be allowed.

7. CONSEQUENT LY , Revision Petition filed by the Petitioner is allowed and impugned order dated 3.12.2007 passed by Learned State Commission in Appeal No. 172 of 2002 - Ramakanta Samal Vs. M/s. Baba Motors & Ors., is set aside to the extent of Petitioners, with no order as to costs.