
(1994) 03 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

CONSUMER PROTECTION COUNCIL

APPELLANT

Vs

Hindustan Motors Ltd.

RESPONDENT

Date of Decision : 16-03-1994

Acts Referred:

Citation : 1994 2 CPR 237 : 1995 1 CLT 613 : 1995 1 CPJ 253

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Advocate : KumL.K.Bhaya , V.B.Tiwari , R.R.Panchal

Judgement

1. -THE Complainant No. 1 is a registered voluntary consumer association and Complainant No. 2 is the affected consumer. THE Complainant No. 2 is carrying on the business as gents' tailor and has filed this complaint against the manufacturer-Opposite Parties Nos. 1 and 2 and the dealer-Opposite Party No. 3 for supplying an Ambassador car which he had purchased as a result of unfair trade practice adopted by the Opposite Parties. That the car was defective inasmuch as same was suffering from various defects. It is not disputed that the Complainant No. 2 purchased a brand new Ambassador car whose registration No. was GCV 882 bearing Engine No. 6/ E/H/048792 on 19.7.1988 from the Opposite Party No. 3 and bill for Rs. 99,147/- has been given. THE delivery appears to have been given on the next day i.e. on 20.7.88. According to the Complainant, at the time of delivery there was a differential noise and that defect was mentioned in the delivery slip dated 20.7.88 by the Complainant. During the guarantee period the car had been sent to the garage of Opposite Party No. 3 from time to time for differential noise, leakage of oil, excessive oil consumption and poor average of about 5 kms. per litre. It may be mentioned here that the Opposite Parties Nos. 1 and 2 are manufacturers of the Ambassador car and the Opposite Party No. 3 is the dealer of the Opposite Parties Nos. 1 & 2, Hindustan Motors Limited. According to the Complainant the car had manufacturing defects viz. its engine was not properly working, there was oil in the radiator etc. and the Complainant has relied upon following pieces of evidence viz. 1. that the car has travelled from Calcutta to Ahmedabad by road and had travelled more than 2000 kms. which fact was not disclosed to the Complainant. 2. that it required repairs

from the day when it was purchased which a brand new car will never require. 3. that the engine of the car had to be changed by the Opposite Party No. 3 which fact also was not disclosed to the Complainant and not even admitted in the written statement filed by the opponent No. 3. THE car had to be kept for repairs for several days which has deprived the Complainant of the use of the car resulting into wastage of time and causing harassment, inconvenience and suffering.

THE Complainant has also relied upon the job card which has been subsequently produced by the Opposite Party No. 3, the dealer. THE learned Advocate for the Complainant has, therefore, submitted that the dealer might have tried his level best to repair the car from time to time but the engine contained some inherent manufacturing defect which could not be repaired permanently by the dealer and such defective car cannot be delivered as a brand new car and, therefore, the Complainant is entitled for the replacement of the car.

2. ALL the Opposite Parties have filed their version and have denied their liability. We will first examine the arguments of the learned Advocate of the Complainant. The material part on which the learned Advocate for the Complainant relies on is para 3.6 of the complaint which reads as under:- "To remove these defects, the opponent No. 3 replaced the car engine by old engine (half) on or about 21.5.91 and while carrying out of this replacement work, they erased the engine number of the old engine and marked on this old replaced engine the aforesaid original engine number 6/E/H/048792 of the new Car."

Since this was a very serious averment in the complaint, the learned Advocate drew our attention to the reply filed by the Opposite Party No. 3 at Ex. 12, para 11(d) which is in Gujarati reads as under: (English translation by us). "The allegations made by the Complainant in para 3.6 are not true and we, the Opposite Party No. 3 are not admitting the same. We further declare that on 21.5.91 we had changed certain parts of engine at his request and for his satisfaction free of charge and to show our goodwill. After such change there was no trouble in the engine of the disputed car. We have made this change without charging anything and after the expiry of the guarantee period as a good gesture by the Opposite Party No. 3." Whereas the Opposite Party No. 1 denied the averments in para 12 which reads as under:- With reference to paragraph (3.6) of the complaint the Opposite Party No. 3 deny of the contents therein being beyond its knowledge. However the said company state that embossing of engine number is required to maintain the identity of the car in question in accordance with the Motor Vehicles Act, 1988."

(both the parties agree that it should Opposite Party No. 1) The Opposite Party No. 1 filed the written statement on 3.2.1993 and the Opposite Party No. 3 filed the written statement on 12.3.1993. At that time the job cards were not brought on record. Application was made by the learned Advocate of the Complainant on 29.3.1993 to give direction to the Opposite Party No. 3 to produce the job card and since Mr. D.N. Shah appearing for the Opposite Party No. 3 had agreed to

produce the same, we had not passed any order. Thereafter on 19.4.93 Mr. D.N. Shah produced the xerox copy of the job card which has been given collective Exh. No. 33. The Complainant has further made an application to the Commission to appoint the Commissioner to examine the condition of the car whose engine number was scored out etc. and my predecessor had passed an order dated 7.6.93 to appoint the Commissioner to examine whether the engine number has been changed. Since the Opposite Party No. 3 consented to appoint Mr. Samir Pathak of W.I.A.A. as Commissioner, Mr. Pathak was appointed as Commissioner and the Commissioner has already submitted his report against which no objection appears to have been filed. We will consider the report at the appropriate place. After having realised the position, the Opposite Party No. 3 has filed an affidavit on 14.2.94 through Mr. R.H. Desai and the material portion of the said affidavit reads as under:- "I further submit that if your Lordship will see the contents of first job card dt. 11.7.88 then will be able to realise that the car is run for 2192 km. before the delivery given to the Complainant No. 2 because the car had been bought from HM Factory, Calcutta by road to the workshop of Opp. Party No. 3, which shows that the engine was in the perfect working condition."

The next important portion on which Ms. Bhaya relies on is "it is my submission that the say of the Compt. for changing half machine after warranty period is old and not new is not true and far from the truth. The half machine applied at the instance of the Compt. No. 2. It is also denied that the Opp. No. 3 has erased the Engine No., when the half engine was applied at the instance of Compt. No. 2. When the half engine was applied at his instance he was present and he was shown m/c and its number etc. He who checked the same and after the verification and satisfaction he took the possession of the car. In job card dated 20.7.92 the endorsement made by the Complainant does not show such allegations etc."

3. NOW, relying upon these changed averments made from time to time, the learned Advocate submits that originally though there was a clear averment in the complaint that the engine has been changed by the Opposite No. 3 the fact was totally denied and only change of some engine parts was admitted. In order to prove the case, the Complainant applied for the production of job cards. The job cards were produced and in job card dated 21.5.91 it is noted in Gujarati as under (translation by us): "Half engine has been installed as stated by the Co. Taking delivery on responsibility and warranty of Co." If you read this job card, nowhere it is mentioned that half engine has been installed or changed. It only speaks of change of oil, oil filter, cover oil seal, gasket, engine plate, chamber packing timing cover, oil etc. We, therefore, asked Mr. Panchal, learned Advocate for the Opp. Party No. 3 to show whether any note has been made regarding change of engine or changing the number etc. Mr. Panchal could not point out such noting by the company except the note made by the Complainant. NOW, according to the learned Advocate of the Complainant, having realised that their own job card and the report of the W.I.A.A. which is considered to be an

independent agency will be contrary to the facts and statements in para 11, a vain attempt has been made to file a further affidavit after a lapse of more than two years from the date of the complaint and this affidavit is filed by an employee and Supervisor of the Opposite Party No. 3 where he has also admitted that the car had run 2192 kms. prior to the delivery as a new car. NOW, the learned Advocate for the Complainant argues that the car has travelled 2192 kms. is a statement which can be viewed on both ways viz. that when the car arrived it could do 2192 kms. or the car has been driven in such a rough manner it suffered engine damage while bringing it from Calcutta to Ahmedabad. Again, the learned Advocate submits that this fact has not been brought to the notice of the customer. There is no evidence on record which shows that at the time when the delivery was made this fact that the car has travelled 2192 kms. prior to the date of delivery was mentioned anywhere except this fact came to the knowledge when the job cards were produced by the Opposite Party No. 3. We have, therefore, consider as to whether the car suffered engine damage because it was driven from Calcutta to Ahmedabad at a high speed and total negligence to its machinery or whether it was a fit car to travel this distance. So far the change of engine is concerned, though there was a clear denial, now there is a partial admission that the Opposite Party No. 3 has changed half engine at the instance of the Complainant. But has also again denied that the company has erased the engine number when the half engine was installed at the instance of the Complainant No. 2. This fact is borne out by the statement by Opposite Party No. 1 in its written statement in para 12 where the Opposite Party has stated that embossing of engine number is required to maintain the identity of the car in question in accordance with the Motor Vehicles Act, 1988. If the Opposite Party No. 3 accepts that they were changed half engine it follows that they shall have to change the original engine number of that particular part to match with the original number of the original engine. We are, therefore, not in a position to accept the plea put forward by Opposite Party No. 3 who apparently tries to protect the interest of the manufacturer. It could have been much better if the Opposite Party No. 3 had come out with clear cut case that in order to put the car in order they had to change the half block of the engine because that might probably be the real reason why the oil was leaking into the radiator. It might also be the reason why the car was not giving mileage which has been represented by the manufacturer Now, we will consider the version of the Opposite Party No. 3. In para 7 of the written statement, the Opposite Party No. 3 has admitted that from the day the car was purchased by the Complainant till 1991 the Complainant has sent the car for reparation and service and same has been done by the Opposite Party No. 3 and after showing satisfaction the Complainant has taken the delivery. If a person has purchased brand new car and if he has to send the same for continuous period of three years for repairs it clearly shows that the car was not in proper working condition. The very fact that the Opposite Party repaired the same without charging definitely shows that the Opposite Party accepted their obligation and repaired the same even though the guarantee period has expired. We do not believe that the Opposite Party No. 3

was doing this for a charitable purpose. The Opposite Party No. 3 is the dealer of the car and is not supposed to render free services after the guarantee period unless they are obliged to do and that too to the extent of changing the half engine which is of a substantial cost and that too after the guarantee period. The job cards themselves show that the car has been sent for repairs number of times so much so that ultimately the half engine had to be replaced clearly show that the car which was delivered to the complainant cannot be said to be a brand new car as it is understood in the market. A brand new car generally will not require repairs for number of years and if we want to deliver the goods which can stand the competition in the market, the car shall have to be in very perfect order. That the customer is paying the price that is increased from time to time by the manufacturer. We are constrained to say that all the conditions laid down for purchasing the car are only one sided and the manufacturer has taken the customer at ransome and forced the customer to take delivery of the car and the consumers have no alternative except to purchase the car available in the market. It is also very imperative both for the manufacturer as well as the dealer to inform the consumer that the car has been brought from Calcutta and has run kms. exceeding 2,000. The delivery is always given after full payment and unless the car is being used for some time it will not be possible to understand the defect for a layman consumer like the present consumer who is doing the business of tailoring.

4. THE Opposite Parties Nos. 1 and 2 have not filed any affidavit but has filed the written statement with verification of one Ram Ratan Damani, Constituted Attorney of the Opposite Party No. 1 who had no personal knowledge and has filed the written statement on information. In other words, Hindustan Motors have not examined any technical person or any person who was in checking and testing department who could have said that the car was in perfect new condition when the same was manufactured and was free from any engine defect especially when the complaint has been filed and several defects have been pointed out in the complaint. THE dealer must have indicated all these complaints of the consumer from time to time to the manufacturer but the manufacturer has neither produced those memos of the dealer nor any evidence to contradict the statement of facts made in the complaint. The Opposite Party No. 3 has filed the written statement with affidavit of Mr. K.N. Shah who is Manager (Accounts) and a belated affidavit of Mr. R.H. Desai which has been objected to by the Complainant since the matter was posted for arguments. In any view of the matter, we are calling undisputed evidence as under:- 1. the admitted facts before the delivery of the car that the same was brought from Calcutta to Ahmedabad by road which has travelled 2192 kms. 2. that the job cards of the Opposite Party No. 3 which show the reparation made from time to time starting from day one. 3. that as late as May 1991 half engine appears to have been changed by the Opposite Party No. 3. 4. report of the W.I.A.A. which shows that the car did not have the original engine block and number was erased.

Taking all these facts and circumstances and affidavit of the Complainant, replies

filed by the Opposite Parties into consideration, we have no doubt that the car when it was delivered to the Complainant had some inherent defects which could not be removed inspite of various attempts made by" the Opposite Party No. 3. Ultimately, the Opposite Party has to change the engine block because possibly there might be some crack in the engine block or some such defect which could not be repaired without such qchange. This changing of the block took about 2/3 years. Till then the Complainant was always in difficulty. Even if we believe that after the change of the engine block the defect was removed, the Opposite Party cannot escape from the liability that the car when it was delivered was defective requiring atleast change of the engine block. The questio that rises, therefore, is that a car which required replacement of engine block (half engine) can be said to be a car which can be sold as a brand new car? According to our opinion it would have been much better for the Opposite Party No. 3 to tell the manufacturer that the engineblock of the car was unrepairable and required changes. But this is between the manufacturer and the dealer. We cannot ascertain their inter-se liability. Now, if the car requires change of engine block and even if it is changed, the other parts might be old parts and such a reparation cannot satisfy the demand of the Complainant atleast for the change of engine if we may not permit replacement of whole car. Considering all these facts and circumstances, we are satisfied and we are of the opinionthat when the car was delivered, it had an inherent manufacturing defect atleast in the engine for which both the manufacturer as well as the dealer are responsible to make good the loss suffered by the claimant.

5. CONSIDERING the assistance given by the Opposite Party No. 3 to repair the car from time to time even after the expiry of the period of guarantee, we are not inclined to award any other damages from the Opposite Party No. 3 except passing an order to change of engine at the cost of Opposite Parties Nos. 1 and 2.

6. WHEN the car was examined by WIAA officer, it was not being used because of engine trouble. The learned Advocate for the Complainant was vehemently urged that if the Commission is not passing order for replacement of the car, the Commission should atleast grant the prayer for change of engine and loss suffered by the Complainant who has been deprived of the use of the car atleast when the car was under repairs and subsequently on account of engine trouble it had to be kept in non-use. That there is much substance in the argument of the Complainant. However, we are inclined to pass order for replacement of engine and considering the facts and circumstances we are granting compensation for limited amount of Rs. 5,000/- only. Since there is a manufacturing defect we hold that the Opposite Parties Nos. 1 and 2 are also liable to the damages to the Complainant and since the Opposite Party No. 3 is a contracting party, we shall have to pass order against it also. ORDER The Opposite Parties Nos. 1, 2 and 3 shall replace the engine by installing a new engine free from defect at their own cost and shall pay the token damage of Rs. 5,000/- to the Complainant and also cost which we quantify at Rs. 1,000/- only. The engine shall be replaced within 4 weeks from today after giving intimation to the Complainant by registered post

to bring the car to the workshop for reparation. Complaint allowed.