
(2017) 08 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Case No : 1616 of 2017

DAIMLER FINANCIAL SERVICES INDIA PVT. LTD. & ANR.

APPELLANT

Vs

LAXMI NARAYAN BISWAL S/O.SRI. PADMANAV BISWAL

RESPONDENT

Date of Decision : 30-08-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : (2017) 08 NCDRC CK 0042

Hon'ble Judges : Rekha Gupta

Final Decision : Appeal Dismissed

Judgement

1. The present first appeal has been filed against the judgment dated 28.04.2017 of the Odisha State Consumer Disputes Redressal Commission, Cuttack ("the State Commission") in Consumer Complaint no. 51 of 2016.

2. The facts of the case as per the respondent/ complainant are that the respondent was an unemployed youth. In order to earn his livelihood he decided to purchase two Hywa Truck bearing model no. Bharat Benz HDT 2523 C 16 cum bearing registered no. OD 02 D 9373 and OD 02 D 9383, with the financial help of the Daimler Financial Service India in the year 2013. For the said purpose the respondent had approached the said financier for sanction of loan and loan was sanctioned and the loan agreement executed between the parties. It was decided to sanction the loan of Rs.23,55,945/- for each vehicle of the said financier to be payable in 35 EMI months with loan agreement nos.20100919 and 20100920. Further, the EMI which was to be paid to the appellants which comes to payment to each instalments payable monthly on 4 th of every month. The due date of commencement of the payment was fixed as 04.01.2013 to 04.12.2015. Copy of the sanction letter along with schedule of payment of both the vehicles are annexed herewith as Annexure 1 and 2 respectively.

3. Out of the total loan of Rs.23,86,995/- for each vehicle, the respondent had already paid the entire loan amount and had agreed to pay the full and final

settlement on 05.04.2016 by making payment of Rs.14,70,000/- and had received the possession of the vehicle on the same day with a further condition that the respondent should withdraw the Writ Petition bearing no. WP (C) 2307 of 2016 from the High Court of Odisha. Prior to liquidation of loan/ expiry of the agreement the petitioner had seized the vehicle for which the respondent had approached the High Court of Odisha by way of filing a Writ Petition. The High Court had issued notice and the petitioner after receiving the notice had called the respondent for a settlement. As per the said settlement the respondent had already paid a sum of Rs.14,70,000/- towards full and final settlement outstanding in respect of both the vehicles.

4. Though the respondent in pursuance to the aforesaid settlement had paid the entire amount towards liquidation of loan and had withdrawn the Writ Petition before the High Court of Odisha, the appellants taking advantage of the situation have not yet issued the NOC to the respondent. The respondent hence filed a Consumer Complaint no.51 of 2016 before the Odisha State Consumer Disputes Redressal Commission, Cuttack with a prayer:

* It is therefore, prayed that the complaint be admitted and notice be issued to the petitioner/ opposite parties calling upon them to show cause as to why the relief claimed under paragraph 11 and the schedule mentioned in the said paragraph - 11 and the schedule mentioned in the said paragraph shall not be granted and if the petitioner/ opposite party fails to show cause or show insufficient cause then the action of the petitioner/ opposite party in not granting NOC may be declared as illegal deficiency in service and unfair trade practice and the petitioner/ opposite parties may be directed to furnish NOC in respect of the truck bearing no. OD 02 D 09373 and OD 02 D 9383 within a stipulated time to be fixed by the Commission;

* Further, it may be declared that the petitioner/ opposite parties are not entitled to any other dues from the respondent/ complainant as the respondent/ complainant has honestly repaid the loan dues;

* And may pass any other order/ orders as deem fit proper in the facts and circumstances of the case;

5. During the hearing of the said complaint the State Commission passed the impugned order dated 28.04.2017 which reads as under:

" Objection was raised by the learned counsel for the opposite parties that this Commission has no pecuniary jurisdiction to entertain the consumer complaint. Therefore, the Consumer Complaint should not be admitted and it should be dismissed.

Learned counsel for the opposite parties referring to paragraph 11 of the complaint petition submitted that the complaint was valued to the tune of Rs.95,000/- for deficiency in service. Therefore, this Commission lacks pecuniary jurisdiction to entertain the complaint.

On the other hand, learned counsel for the complainant relying on a decision of the Hon"ble National Commission, New Delhi decided on 07.10.2016 in Consumer Case no. 97 of 2016 in the case of Ambrish Kumar Shukla and 21 Others vs Ferrous Infrastructure Pvt. Ltd. submitted that in case where the possession of the house has already been delivered to the complainants, but some deficiencies are pointed out in the construction/ development of the property, the cost of any defects, deficiency in service or goods, would have no bearing on the determination of pecuniary jurisdiction. If the aggregate of value of goods purchased or services hired or availed of by the consumer and added to the compensation if claimed and the claim exceeds the pecuniary jurisdiction of this Commission then this Commission has jurisdiction to entertain the complaint. It is further submitted by him that if for instance a house is sold for more than Rs.20,00,000/- and certain defects are found and the cost of defects is Rs.5,00,000/- the complaint would be filed before this Commission since the value and service is Rs.25,00,000/-

In this case, the value of the vehicles is Rs.47,00,000/-. For deficiency of service the complainant claimed Rs.95,000/-. So the value of the entire service is Rs.47,95,000/-. Therefore, this Commission has pecuniary jurisdiction to entertain the complaint.

We have gone through the decision referred by the learned counsel for the complainant and find that appropriately learned counsel for the complainant has relied upon the decision which clearly provides the pecuniary jurisdiction of this Commission to determine the value of original goods purchased/ service availed and the valuation of deficiency thereon. So we find that this Commission has pecuniary jurisdiction to entertain the case. Therefore, the Consumer Complaint is admitted.

List this matter on 29.05.2017 for filing written version by the opposite parties, if any."

6. Hence, the present appeal.

7. I have heard the learned counsel for the appellant Mr Gautam Gupta. Learned counsel for the appellant has contended that the State Commission has wrongly interpreted the judgment of this Hon"ble National Commission in the case of Ambrish Kumar Shukla and 21 ors vs Ferrous Infrastructure Pvt. Ltd. , and has passed the impugned order. It is submitted that this Hon"ble National Commission in the case of Ambrish Kumar Shukla (Supra) has held that:

" It is the value of the goods or service, as the case may be and not the value or cost of removing the deficiency in the service which is to be considered for the purpose of determining the pecuniary jurisdiction".

8. He further contended that Section 17 of the Act deals with two aspects, i.e., "where the value of the goods or services and compensation, if any, claimed exceeds Rs.20 lakh". The Hon"ble National Commission in the case of Ambrish

Kumar Shukla (Supra) has dealt with the first aspect wherein it was held that the value of the goods or services, as the case may be and not the value or cost of removing the deficiency in the service which is to be considered for the purpose of determining the pecuniary jurisdiction. The learned Counsel contended that in the present complaint, the respondent has filed the complaint seeking only compensation amount of Rs.95,000/- and that the complainant is not claiming any value or cost of removing the deficiency and as such, the first part is not applicable in the present complaint. Thus, the judgment of Ambrish Kumar Shukla (supra) is not applicable in the present case and as such, the impugned order is liable to be quashed.

9. I have carefully gone through the judgment of Ambrish Kumar Shukla and 21 Ors vs Ferrous Infrastructure Pvt. Ltd. The relevant portion reads as under:

"14. Reference order dated 11.8.2016

Issue No. (i)

It is evident from a bare perusal of Sections 21, 17 and 11 of the Consumer Protection Act that it's the value of the goods or services and the compensation, if any, claimed which determines the pecuniary jurisdiction of the Consumer Forum. The Act does not envisage determination of the pecuniary jurisdiction based upon the cost of removing the deficiencies in the goods purchased or the services to be rendered to the consumer. Therefore, the cost of removing the defects or deficiencies in the goods or the services would have no bearing on the determination of the pecuniary jurisdiction. If the aggregate of the value of the goods purchased or the services hired or availed of by a consumer, when added to the compensation, if any, claimed in the complaint by him, exceeds Rs.1.00 crore, it is this Commission alone which would have the pecuniary jurisdiction to entertain the complaint. For instance if a person purchases a machine for more than Rs.1.00 crore, a manufacturing defect is found in the machine and the cost of removing the said defect is Rs.10.00 lakh, it is the aggregate of the sale consideration paid by the consumer for the machine and compensation, if any, claimed in the complaint which would determine the pecuniary jurisdiction of the Consumer Forum. Similarly, if for instance, a house is sold for more than Rs.1.00 crore, certain defects are found in the house, and the cost of removing those defects is Rs.5.00 lakh, the complaint would have to be filed before this Commission, the value of the services itself being more than Rs.1.00 crore.

Issue No. (iv)

In view of the answer to the issues No. (ii) and (iii) of the reference order dated 24.5.2016, it is the aggregate value of the goods purchased or the services hired or availed of by all the consumers on whose behalf or for whose benefit the complaint is filed which, added to the total amount of compensation, if any, claimed for all such consumers determines the pecuniary jurisdiction of the Consumer Forum. The value of the goods purchased or the services hired or availed of by an individual consumer and the compensation claimed in respect of

an individual consumer would have no bearing on such determination".

10. Counsel for the appellant has admitted that the respondent/ complainant had taken loan of Rs.47.74 lakh, hence, the cost of service and compensation asked for is Rs.95,000/-. Hence as the aggregate value of the cost of services hired or availed of and the compensation claimed by the complaint certainly falls within the pecuniary jurisdiction of the State Commission. Two opportunities were given to the counsel for the appellant to argue the matter after carefully reading the order of the larger Bench of Ambrish Kumar Shukla and 21 Ors vs Ferrous Infrastructure Pvt. Ltd. However, it appears that he is not able to appreciate or comprehend the order.

11. In view of the discussion above, I find no jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of powers under section 21 (b) of the Consumer Protection Act, 1986. The first appeal is, therefore, dismissed with no order as to costs.