
(2015) 08 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Case No : 3350 of 2014, 3351 of 2014, 592 of 2015

FORD INDIA (P) LTD

APPELLANT

Vs

J SANTHANA RAJKUMAR & ORS ; FORD SERVICES; CHENNAI
FORD

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0033

Hon'ble Judges : V K Jain, B C Gupta

Advocate : Vikram Dhokalia, Nitesh Kumar Singh, Neha, B Karunakaran

Final Decision : Petition disposed

Judgement

[1] The complainant/respondent no. 1 in these three revision petitions, J. Santhana Rajkumar, purchased a Ford Figo car on 20.09.2010, bearing registration No. TN 07 BJ 3330 from the OP-2 dealer, MPL Ford Services (petitioner in RP No. 592/2015), manufactured by OP-1, M/s Ford India Private Limited (petitioner in RP No. 3350-3351/2014). The OP-3, M/s Chennai Ford is also a dealer of the said cars. It has been stated in the consumer complaint in question that the said car suffered from inherent defects and it was the duty of the OPs to carry out repairs in the vehicle to remove the defects or to replace the vehicle altogether. The first service of the car was carried out on 12.10.2010 by OP-2 dealer and a sum of ₹1271/- was collected towards gasket, wash-fluid tube, oil filter and engine oil. The second service was got done on 29.01.2011 from OP-3, M/s. Chennai Ford, since the complainant could not get time slot for the same from OP-2. The third service was got done on 12.05.2011 from OP-2 during which the OP-2 replaced the TURBO component which is the main component in a diesel car. A sum of ₹3,682/- as per invoice dated 12.05.2011 was paid to OP-2. It has been alleged in his complaint that as per the Job Card, a specific complaint was made by him that the engine oil level of the car was getting reduced rapidly. The original TURBO which was defective was not returned to him by OP-2. According to the complainant, the reduction in the oil

level was attributed to inferior quality of piston rings, scorings in the cylinder liner and the engine head cover being worn out, which would result in spillage of oil. There was, therefore, manufacturing defect in the car and the OPs were required to take care of the same as per the terms and conditions of the warranty.

[2] The complainant has further stated that he took the car to Madurai on 17.05.2011 to attend a family function alongwith members of his family. At the outskirts of Madurai city, he found the engine oil level getting decreased rapidly. He contacted the OP-2, who advised him to top up the oil level. He complied with the advice given by OP-2, but found that the oil level was gradually decreasing. He contacted OP-2 again who advised him to approach M/s Akshay Ford at Madurai. He took the car to M/s Akshay Ford, the same day and they topped up the oil level, besides replacing the tube assembly, oil pump, gasket seal, etc. besides the oil sump strainer. M/s Akshay Ford charged a sum of ₹3,940/- from him for this service. They also gave him 4.5 ltr of engine oil as reserve to be utilised if there was drop in oil level while travelling back to Chennai. The complainant brought the car to Chennai on 18.05.2011 with great difficulty. He then took the car to OP-2 for service/repairs on 24.05.2011. The OP-2 gave him an estimate of ₹99,921.17 for repairs of the car and stated that they will commence the repair work if 50% of the said amount was paid to them. The complainant, however, pleaded that the problem in the car was due to manufacturing defect and the defect was covered under the warranty; hence, the car should be repaired free of cost. The OP-2 offered a discount of 30% on the amount quoted for repair of the car. The car was left with OP-2 and has been lying with them since then. The present consumer complaint was filed in July 2011, seeking direction to the OPs to carry out repairs in the car by replacing the worn-out parts Or in the alternative, to replace the car with a new car. The complainant also demanded a refund of all charges paid by him during service of the car and a further sum of ₹2 lakh towards mental agony and suffering when he travelled to Madurai along with his wife, two children and old-aged parents.

[3] The complaint was resisted by OP-1 as well as OP-2 by filing their written versions before the District Forum. It is stated by OP-2 that the complainant brought the car for second service, when the vehicle had run 11317 kms, whereas he should have got the service affected at 10000 kms. Similarly, for third service, he brought the car when the vehicle had run 24903 kms, whereas the third service should have been availed at 20000 kms. The complainant had, therefore, carried out violation of the terms and conditions of the warranty. During the third service, they found on investigation that the TURBO charger had internal leak and hence, they replaced it free of cost. The vehicle was delivered to the complainant after service with full satisfaction. OP-2 have further stated that when the complainant brought the car on 24.05.2011 after his visit to Madurai, they found on analysis that the engine was failed due to oil starvation which lead to high oil consumption and black smoke. They also found that the oil sump bottom position had got external underbody hit, due to which the sump

strainer got displaced. The oil supply to TURBO charger through metal tube thus got disturbed. According to the OP-2, M/s Akshay Ford had explained the position to the complainant on 17.05.2011 on his visit to them but he insisted to replace the sump strainer alone. It is the case of the OPs, therefore, that the problem in the car arose due to external damage during under body heat. The OP-2 had discussed the matter with OP-1 regarding the repair of the vehicle who stated that the damage was not covered under the warranty. The OP-1 had agreed to share a cost of ₹30,000/- as a measure of goodwill only, but the complainant did not give any response to the offer.

[4] The OP-1 also filed his written reply in which they stated that the vehicle had been purchased for a commercial purpose and hence, the complainant was not a "consumer" within the meaning of section 2(1)(d) of the Consumer Protection Act, 1986. They further stated that the car had not been brought for service as per the conditions given in the owner's manual. The vehicle had suffered under-body external damage due to rash and negligent driving of the vehicle and hence, the same was not covered under warranty. The OP-1 also denied that they had offered to meet a part of the cost of the repair of the vehicle. OP-1 asserted that there was no manufacturing defect in the vehicle and hence, they were not liable to provide any compensation etc. to the complainant.

[5] The District Forum vide their order dated 27.08.2012 allowed the complaint and directed the OP-1 and OP-2, the present petitioners, to effect the repair of the car by replacing the worn out parts with new parts, Or in the alternative to replace the car with a new car. Both the OPs-1 & 2 were also directed to pay jointly and severally a sum of ₹55,000/- as compensation and ₹5,000/- as cost to the complainant. Being aggrieved against the order of the District Forum, the petitioner/OP-1 Ford India Limited as well as Petitioner/OP-2 MPL Ford Services, filed appeals before the State Commission, which were partly allowed and the amount of compensation was reduced from ₹50,000/- to ₹25,000/-. The rest of the order regarding the repair of the car, or in the alternative, to replace the car was, however, retained. Being aggrieved against this order, OPs-1 & 2 have filed the present revision petitions.

[6] During hearing before this Commission, the learned counsel for the petitioner, M/s Ford India Pvt. Limited stated that it would not be possible for them to repair the said vehicle and make it road-worthy, considering the fact that it was abandoned by the complainant about 4 years back and had virtually become junk. The problem in the vehicle was due to under-body external damage suffered by the vehicle because of rash and negligent driving. In fact, the complainant was guilty of contributory negligence as he had not got the vehicle serviced in time and further, he had not followed the advice given by M/s Akshay Ford, Madurai that the engine required to be checked/inspected thoroughly, and kept on driving the vehicle for a number of days in spite of specific warning given by M/s Akshay Motors that resulted in further damage to the vehicle. It has been stated in the grounds of revision in RP No. 3350

3351/2014 that between 17.05.2011 to 24.05.2011, the complainant had driven the vehicle 926 kms with damaged oil chamber and under-body damage which had further aggravated damage to the engine.

[7] Per contra, it was argued by the learned counsel for the complainant/respondent no. 1 that the vehicle in question suffered from a manufacturing defect; rather the manufacturer company had decided to recall 1.66 lakh vehicles of Figo and Classic models manufactured between January 2010 and June 2012. The OP should, therefore, have carried out the necessary repairs in the vehicle or replaced the vehicle in accordance with the concurrent findings of the consumer fora below. The learned counsel has drawn attention to a number of orders made by the National Commission in this regard, in particular, "M/s Scooter India Ltd. & Anr. vs. Mahabananda Mohanty & Ors." [RP No. 240/2002 decided on 07.02.2003], in which it was stated that it was the duty of the manufacturer and the dealer to ensure that the defects in the vehicle are removed. In "Malwa Automobiles Pvt. Ltd. vs. Sunanda Sangwan & Anr., 2013 4 CPJ 612" , this Commission held that the consumer should be provided the vehicle in absolute defect-free condition, duly certified by the technical personnel of the manufacturer. The learned counsel has also drawn attention to a judgment of the Hon'ble Apex Court in "Mrs. Rubi (Chandra) Dutta vs. M/s United India Insurance Co. Ltd., 2011 3 SCR 977", saying that the powers of this Commission in the exercise of revisional jurisdiction are limited and the concurrent findings of the consumer fora below should not be disturbed.

[8] We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

[9] The main issue that arises for our consideration is whether the vehicle in question suffered from any inherent defect, for which the OPs are liable to compensate the complainant in any manner. It is an admitted case of the parties that when the vehicle was brought to OP-2, M/s MPL Ford Pvt. Limited on 10.05.2011 for the third service, it was found that the TURBO charger had internal leak and that it was replaced free of cost. The complainant has mentioned in his complaint that the original TURBO charger that was found defective was not returned to the complainant by OP-2. The complainant has further stated that he made a specific complaint that the engine oil level was getting reduced rapidly and this factor is mentioned in the Job Card made at the time of third service. The OP-2 has not denied this version in the written reply filed by them before the District Forum, which leads to the presumption that the problem of engine oil level getting reduced was there before the trip made to Madurai by the complainant. The version of OP-2, therefore, that the car was delivered in an absolutely fit condition after the third service is not correct. Just after few days from the third service when the car was being taken to Madurai, it suffered problems on the way causing harassment to the complainant. Had the problem been only with the TURBO, of the vehicle, it would have been over as soon as the TURBO was changed. That having not happened, it is obvious that

the vehicle had some other defect, which the opposite parties did not or could not take care of.

[10] Further, it has been stated by OP-2 in their written reply that when the vehicle was brought to them on 24.05.2011 for repairs after the Madurai trip of the complainant, they found that the engine noise was abnormal and the engine had failed due to oil starvation which led to high oil consumption and black smoke. The OPs have tried to explain that the problem in the vehicle came due to under-body external damage as a result of rash and negligent driving by the complainant. However, this version of the OPs has not been substantiated from any material on record. Since the vehicle has been lying in the custody of the OPs since a long time, they could have carried out the necessary technical inspection and brought out that there was evidence of under-body external damage resulting in leakage of water from the engine of the vehicle. But the OPs have not done so. From the sequence of events from the carrying out third service and replacement of TURBO charger, it becomes evident that the vehicle did suffer from problems, even before it was taken to Madurai by the complainant. The conclusion arrived at by the State Commission and the District Forum in their concurrent findings that the vehicle was defective, cannot be controverted therefore. The definition of "defect" has been given in section 2(f) of the Consumer Protection Act, 1986 as follows:- ""defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods"

[11] A plain reading of the above provision shows that any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard of a product is to be qualified as a "defect". In the strict technical sense of the word, such a defect may or may not qualify to be classified as a manufacturing defect, but defect of any kind has to be given due attention by the OPs and all steps need to be taken to remove such a defect to make the product defect-free. If it is not possible to remove the defects, further action has to be taken by way of either replacement of the vehicle or by giving suitable compensation to the complainant so as to meet the objectives and purposes for which the Consumer Protection Act, 1986 has been enacted. This view has been elaborated in detail in the case "Malwa Automobiles Pvt. Ltd. vs. Sunanda Sangwan & Anr.", already announced by this Commission.

[12] In so far as contributory negligence on the part of the complainant as alleged by the OPs is concerned, it is made out that despite returning from Madurai 18.05.2011, the complainant took the vehicle to OP-2 for repairs after six days, i.e., on 24.05.2011. The OPs have alleged that the complainant drove the vehicle for 926 kms with damaged oil chamber and under-body damage which further aggravated damage to the engine. The OPs have also stated in their reply that the complainant did not bring the vehicle for second service at

the requisite mileage as laid down in the owner's manual for the vehicle. These factors show that there is some contributory negligence on the part of the complainant as well.

[13] During the course of hearing before us, we had asked the petitioners to attempt carrying out repairs in the vehicle. However, the petitioners expressed their inability to do so taking the plea that the vehicle had been lying with them for the last four years and it was not in a repairable condition and almost become junk.

[14] Looking at the entire factual matrix of the case, when the OPs have stated categorically that the vehicle cannot be repaired and there is contributory negligence on the part of the complainant as well, we feel that the ends of justice shall be met if the purchase value of the vehicle is refunded to the complainant after applying a lump-sum depreciation factor of 20% on the original price of the vehicle. The OPs 1 & 2 are, therefore, directed to refund, jointly or severally, 80% of the cost of the vehicle to the complainant. If the aforesaid payment is not made within four weeks, it will carry interest @ 9% p.a. from the date of this order, till payment. The orders passed by the consumer fora below are, therefore, ordered to be modified accordingly. Both the revision petitions are disposed of with this direction. There shall be no order as to costs.