

(2016) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Case No : 636 of 2013

HIND MOTORS INDIA LIMITED & ANR.

APPELLANT

Vs

JODH SINGH & 2 ORS.

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

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

Citation : 2016 3 CPR 35

Hon'ble Judges : Dr. B.C. Gupta

Advocate : RIJU RAM JAMWAL, Maibam N. Singh

Judgement

1. This revision petition has been filed u/s 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 26.09.2012, passed by the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in FA No. 1331/2010, vide which, while dismissing the said appeal, the order dated 01.07.2010 passed by the District Forum Mohali in Consumer Complaint No. 77/2010, allowing the said complaint, was confirmed.

2. The facts of the case are that the complainant/respondent No. 1 Jodh Singh filed the consumer complaint in question before the District Forum, saying that he purchased a Fiat Linea Diesel Car from the present petitioner/OP1 & 2 from their Mohali Branch on 10.02.2009 for 7,22,489/- after raising a loan of 5 lakh from the Jogindera Central Cooperative Bank Baddi, H.P. The said car is manufactured by OP-3 Fiat India Automobiles Limited and it was got insured with OP-4 United India Insurance Company for the period 11.02.2009 to 10.02.2010. It was alleged in the consumer complaint that from the very date of purchase, the vehicle did not work properly, and he had to visit the petitioner Hind Motors many times, complaining about defects in the said vehicle. Some specific instances have been given when certain repair work was carried out by M/s. Hind Motors in the vehicle on 14.10.2009 and 03.11.2009, which included the replacement of certain parts. On 25.11.2009, the petitioner Hind Motors told him that turbo charger needed to be replaced or repaired. Further, on 12.01.2010, he

was told that there was dent in engine oil sump but the repair could not be done within warranty period. Alleging that there were many defects in the vehicle and he had to visit the OPs many times to get them repaired, the complainant sent legal notice to the OPs on 28.01.2010, following which, he filed the consumer complaint in question, seeking directions to the OPs to replace the defective car with a new one, or to pay a sum of 10 lakh as compensation on account of deficiency in service and causing mental harassment to him, alongwith interest @12% p.a. with cost of 20,000/-.

3. The complaint was resisted by the petitioners/OP-1 & 2 by filing a written statement before the District Forum in which they stated that the complainant first approached them on 17.04.2009 for the first free service and then on 30.06.2009 for running repairs. There was no complaint of any kind during these two visits. Thereafter, the complainant took delivery of the vehicle on 14.10.2009 after accidental repair and that he submitted the insurance claim for a sum of 9,488/- with the insurance company, but the same was not paid by them. The OPs maintained that the vehicle in question had met with an accident and hence, it could not be repaired under the warranty.

4. In proceedings before the District Forum, the OP-3 manufacturer did not put in any appearance and hence, was proceeded against exparte. The District Forum after taking into account the averments made by the complainant and other OPs, dismissed the complaint against OP-4 Insurance Company, but allowed the same against OP-1, 2 & 3. The operative portion of the order reads as follows:- "For the reasons recorded above, complaint against OP No. 4 is dismissed. The complaint is allowed against OP No 1, 2 & 3. They are directed to replace the engine of the car with a new engine of the same specifications and power within a period of one month from the date of receipt of a certified copy of this order and to deliver possession of the car to the complainant in perfect working condition. On their failure to do so within the aforesaid period, they shall be liable to pay to the complainant market price of the engine as on the date of payment, with interest thereon @9% p.a. w.e.f. 10.02.2009 till the date of actual payment. They should also pay to the complainant compensation for harassment to the tune of 25,000/- and litigation costs to the tune of 5,000/-"

5. Being aggrieved against the said order of the District Forum, appeals were filed before the State Commission by OP-1 & 2 / Petitioners and OP-3 manufacturer. However, both the appeals were ordered to be dismissed vide impugned order and the order of the District Forum was upheld. Being aggrieved against the impugned order, the OPs 1 & 2 and OP-3 filed revision petitions before this Commission separately. The revision petition No. 205/2013 filed by the manufacturer Fiat India Automobile Limited was dismissed in default on 22.01.2016. In the present revision petition no. 636/2013, the respondent/manufacturer were ordered to be proceeded against exparte vide order dated 22.01.2016.

6. During hearing before me, the Ld. Counsel for the petitioner stated that it was

clear from the orders passed by the Consumer Fora below that they had ordered the replacement of the engine of the car with a new engine, meaning thereby that there was manufacturing defect in the said vehicle. The Ld. Counsel argued that the petitioners used to be the dealers of the said vehicle in the past, but a dealer was not responsible, if any manufacturing defect was pointed out in the vehicle. It is a settled legal proposition stated in the orders passed by the Hon'ble Apex Court and this Commission that the manufacturing defect is to be taken care of by the manufacturer only. The petitioner should, therefore, be absolved of their liability, as stated in the orders passed by the District Forum and the State Commission. The Ld. Counsel for the insurance company also stated that no claim was pending with them, regarding any payment to the complainant.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. From the facts and circumstances of the case, it is amply clear that the vehicle in question had to be taken to the petitioners/OPs many times with complaints of defects of one kind or the other in the same. As stated in the impugned order, the District Forum observed that in the job card and invoice dated 14.10.2009, there was no note regarding the accident, alleged to have taken place on 14.10.2009. The District Forum appointed Mr. Jitender Singh Yadav, Automobile Engineer as Local Commissioner vide order dated 03.05.2010. It was concluded from the report of the Local Commissioner that the complaint of engine seizure in the vehicle was not because of slight dent mark observed in the engine oil sump, but it was due to some other defect in the car. Further, based on the report of Sh. V.K. Chaudhari, Works Manager of the Petitioner/OP-1 that there was manufacturing defect in the engine of the vehicle, the OPs were required to replace the engine of the car with a new engine, as the car was brought in the workshop of OP-1 on 30.12.2009 within the warranty period. The State Commission, after taking into account the pleas raised before them, concluded that engine was the defective part of the vehicle and hence, the OPs were required to replace the engine of the car.

9. Since the OP-3, the manufacturer of the vehicle was not present in proceedings before the District Forum and further, revision petition filed by them before this Commission having been dismissed in default, the main point for consideration is whether the liability for replacement of the engine of the car as imposed by the orders of the consumer fora below can be fastened on the petitioners or not.

10. The enquiry made from the Registry reveals that there is no restoration application filed on behalf of the petitioner in RP No. 205/2013, leading to the presumption that the manufacturer has not contested the orders passed by the lower consumer fora.

11. It is evident from the material on record that the replacement of the engine

of the vehicle has been directed by the District Forum as well as the State Commission in the impugned order and hence, the contention raised by the petitioner dealers seems to be correct that this amounts to a manufacturing defect in the vehicle and the responsibility for removal of such defects should be that of the manufacturer only. There is no deficiency in service proved on the part of the petitioner in any manner. This revision petition is, therefore, allowed and the orders passed by the Consumer Fora below modified to the extent that the responsibility for replacement of the engine of the vehicle shall lie upon the manufacturer, i.e., M/s. Fiat India Automobiles only. There shall be no order as to costs.