

(2012) 03 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Hindustan Motors Limited

APPELLANT

Vs

Lalita Tewari

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 72 : 2012 1 CPR 408 : 2012 2 CPJ 219

Hon'ble Judges : R.C.Jain , Vinay Kumar J.

Advocate : Shantanoo Saxena , Mohan Chukshi

Judgement

1. THIS revision petition concerns purchase of a vehicle on 19.2.1999 by one Shri Kedarnath Tewari/Complainant (since deceased). It was a R.T.V. Vehicle manufactured by M/s Hindustan Motors/OP-1, purchased from their authorized dealers Abhishek Motors, Rewa, MP/OP-3. The case of the Complainant was that the vehicle suffered from manufacturing defects due to which it met with an accident on 17.3.1999. It was repaired by the dealer but, the Complainant allegedly refuse to take delivery of the vehicle. In a consumer complaint filed before District Forum, Rewa on 18.1.2000, the Complainant prayed for refund of Rs.3.5 lakhs with 18% interest or in the alternative, replacement of the exiting vehicle with a new one. The complaint was allowed and the District Forum directed the OPs to refund Rs.3.33 lakhs with 8% interest, together with Rs.25,000/- compensation and Rs 2500 costs.

2. THE manufacturer/Hindustan Motors Limited/OP-1 & 2 and the dealer Ahishek Motors/OP-3 both went in appeal before the MP State Consumer Disputes Redresal Commission. State Commission took note of the fact that the Distict Forum had got the vehicle inspected by a qualified engineer, who had pointed out that there were several defects in the vehicle. THE State Commission, therefore, confirmed the finding of the District Forum that the vehicle suffered from manufacturing defects and that the Complainant was entitled to refund of the price of the vehicle. THE State Commission also observed that the seller of the vehicle OP-3 was also constructively liable along with the manufacturer. M/s Hindustan Motors Limited has filed the revision petition before this Commission

against the order of the State Commission. We have perused the record of the case and heard the revision petition at Bhopal on 9.2.2012. Proceedings before the fora below were prosecuted by Smt. Lalita Tiwari (wife) and Shri Rajesh Tiwari (son) as legal heirs of the original complainant Shri Kedarnath Tiwari (since deceased). During the course of hearing Mr. Mohan Chouksey, learned counsel for the respondent/Complainant pointed out that during the pendency of the revision petition, Complainant No.1 Smt. Lalita Tiwari had also died on 6.12.2011. He therefore, made an application for deletion of her name from the list of the respondents and to implead Sri Rajesh Tiwari, as respondent/Complainant. It was permitted, as there was no objection from Shri Shantanoo Saxena, learned counsel for the revision petitioner.

Coming to the merits of the case, we find that the main issue raised in the complaint petition related to an alleged manufacturing defect in the vehicle, which would disturb the balance of the vehicle at speed above 50 kms. It was alleged that the accident of 17.3.1999 was only due to this problem. The District Forum appointed Principal Rewa Engineering College as technical expert to examine the vehicle. His report of 21.8.2008, has been considered by the District Forum. Several defects are attributed by the technical expert (Principal Rewa Engineering College) to the long exposure of the vehicle to the elements. However, a detailed reference is made to the defect in the differential unit of the vehicle in the following terms:- "The differential unit of the vehicle was not functioning properly. The pinion gears were not rotating freely and were effectively locked which may be due to excessive pressure of friction plates which are located between sun gears and cage. This condition is not possible due to prolonged stay of vehicle in non working condition because gears of differential unit were immersed in oil and there was no sign of rusting. Proper functioning of differential unit is very important for maintaining difference in speeds of inner and outer wheels when the vehicle is turned during motion. In present condition, due to locked differential, this vehicle will have a tendency of getting imbalanced at a turning during motion."

3. THUS, the expert opinion clearly supports the allegation about this manufacturing defect being the cause of the accident of the vehicle. Before the District Forum, the dealer/OP-3 was ex-parte but the manufacturer/OP-1 and OP-2 had sufficient opportunity to challenge this finding. The District Forum has examined the expert report at length and observed that there was no demand on behalf of OP-1 and 2 (revision petitioner) for re-inspection of the vehicle. They were however permitted to cross-examine Dr. S.D. Sharma, one of the experts. The District Forum has also observed that according to the experts, despite information no officer of the company was present at the time of inspection of the vehicle. During the course of cross-examination before the District Forum, the experts denied the possibility of the defect in the differential unit having been caused by mishandling. They also asserted before the District Forum that "the balance of speed of the internal and outer wheels being disturbed while turning the vehicle was due to fault in the differential unit and whereby possibilities of

accident remains". We have perused the written objections to the expert report filed before the District Forum on behalf of the OPs. In para 7, an attempt has been made to rebut the finding of the expert on the differential unit by merely stating that that "the vehicle was idle for more than 8 years and further the vehicle was lying bare for such a long period of time under prolonged exposure to changing weather, rains etc." This is at best a very non-specific, non-professional and feeble response to a very specific technical observation.

4. EVEN in the present proceedings the revision petitioner/Hindustan Motors Limited has confined itself to repeating that there were no manufacturing defects in the vehicle and that the accident was caused due to rash driving as well as poor maintenance by the Complainant. No attempt has been made on behalf of the revision petitioner to point out, if any specific evidence was led before the fora below in support of the claim of rash and negligent driving being the cause of the accident. In fact, the District Forum has observed that no evidence was led on this point. The case of the revision petitioner is also that after the accident the vehicle was completely repaired but has been lying with the dealer/OP-3 as the Complainant had refused to accept it. This claim that the vehicle was fully repaired is shattered by the proceedings before the District Forum itself. The expert inspection of the vehicle took place in 2008 i.e. 8 years after its "complete repair" in 2000 and refusal of the Complainant to accept the vehicle. The defect in the differential of the vehicle, which was the most significant issue agitated before the District Forum, had continued to exist even after the so called "complete repair" of 2000. The only inference that can be drawn from this is that repairs had been carried out without removing the main defect. Learned counsel for the revision petitioner refer to the ruling of the Apex Court in *Maruti Udyog Ltd. Vs. Sushil Kumar Gabgotra*, AIR 2006, SC 1586. The matter pertained to allegation some manufacturing defect in the car, for which the Complainant had sought direction to Maruti Udyog Ltd. to take back the car and refund the price paid, with interest. The alleged defect had been attended to, free of charge, as the vehicle was during the warranty period. The case of the opposite party/ Maruti Udyog Ltd. was that their obligation under the warranty was only to repair or replace any part found to be defective. The High Court held that the warranty condition relied upon did not warrant the interpretation that only the defective part was to be replaced and not the car itself. Therefore, the appellant was directed to replace the car or refund the sale price with interest. Hon'ble Supreme Court observed that what was relevant was that the warranty conditions were specially stated. This was not a case of silence of a contract of sale as to warranty. Therefore, the principle of *Corpus Juris Secundum* would not be applicable here. It was therefore decided that the defective clutch assembly shall be replaced at the cost of the company and in addition the Complainant would be entitled to receive Rs.50,000/- costs.

5. THE issue involved in the present case is not interpretation of the warranty conditions but something very different. THE defect in the vehicle was found to be relatable to the accident of the vehicle. Even then, the repairs undertaken

after the accident were found to have left this defect un-removed. THEREfore, in our view the case of the revision petitioner can seek no support from the ruling of the Apex Court cited by him.

6. IT is also stated in the revision petition that the complainant had purchased the vehicle for business i.e. for a commercial purpose and therefore he is not a consumer. This plea ignores the averment in the very first para of the complaint petition wherein it is stated that the vehicle was purchased for self-employment. We therefore, reject the argument of the purchase being for commercial purpose. In view of the examination above, we do not find any substance in the revision petition. The same is therefore dismissed. Accordingly, the common order of the MP State Consumer Disputes Redressal Commission in First Appeal No.1432/2010 and First Appeal No. 2138/2009 is confirmed. We also find it necessary to observe that the revision petitioner has very unnecessarily persisted in prolonging the proceedings despite having completely failed to prove their case before the District Forum. Therefore, we consider it just and proper to award cost of Rs.25,000/- to be paid by the revision petitioner to the respondent No.1/complainant, within three months.