

(2006) 07 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

HINDUSTAN MOTORS LTD.

APPELLANT

Vs

P.VASUDEVA

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Citation : 2006 0 NCDRC 140 : 2006 4 CPJ 167

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Judgement

1. THIS appeal is directed against the order dated 25.10.99 of Consumer Disputes Redressal Commission Union Territory, Chandigarh whereby appellant/opposite party No. 1 and respondent No. 2/opposite party No. 2 were directed to supply a new Contessa car with AC in place of old one within a period of three months failing which amount of Rs.4,50,000/- with interest @ 12% p.a. from date of order, was to be refunded by them to respondent No.1/complainant.

2. COMPLAINT was filed by respondent No. 1, inter-alia, alleging that he purchased a Contessa car with AC from respondent No.2, authorized dealer of the appellant on 8.12.97 for a sum of Rs.4,50,000/-. Immediately after purchase the car started giving trouble. On 21.1.98 it was found that the battery of car was defective and was replaced by respondent No. 2. During the month of April, 1998 when the AC was put to use the engine of car got over-heated. On this defect being brought to the notice of respondent No. 2 the respondent No. 2 repaired it. It was alleged that on way to Nahan the engine again got over-heated. This defect was brought to the notice of respondent No.2 by writing the letter dated 25.5.98 which was followed by reminder dated 11.6.98. Still the defect was not removed. It was stated that respondent No. 1 got the car checked up from Sharma Auto Workshop who found that the paint of the car was not original. Car sold to respondent No. 1 was accidental car. Alleging unfair trade practice on the part of respondent No. 2 and appellant, after serving legal notice dated 20.7.98, complaint was filed seeking refund of the amount of Rs.4,50,000/- with interest of Rs.72,000/-, compensation for mental agony and harassment of Rs.50,000/- and cost of Rs.10,000/-, totaling Rs.5,82,000/-.

Respondent No. 2 in its written version alleged that the car purchased by respondent No. 1 for Rs.4,16,706/- was non AC. After purchase of car, on respondent No. 1's approaching the replying respondent an AC was fitted in the car which fact had been deliberately suppressed by respondent No. 1. Replacement of the battery is admitted. It was alleged that before fitting AC in the car it was brought to the notice of respondent No. 1 that in AC fitted cars of the appellant the radiator panel in the bottom is cut out to ensure smooth and free air flow to the radiator for better and effective cooling and if respondent No. 1 desired it could be done in the car to which she agreed. Radiator panel of the car from the bottom was, thus, cut out as per H.M. guidelines. Car got over heated while on way to Nahan before the said job was done. It was further alleged that report of Sharma Auto Workshop would show that it has been dealing in denting, re-shaping, hydraulic servicing and painting of the cars. Report is undated and such a report could be obtained by anyone. It was pleaded that a second hand car cannot be sold by an authorized dealer. Once a car is sold by a dealer, the buyer has to apply for temporary/permanent registration number which continues for all times to come. In case the car sold to respondent No. 1 would have been second-hand it should have carried the old registration number which was not the case here. Liability to replace the car or refund the amount as claimed was emphatically denied.

3. IN its written version the appellant additionally pleaded that though the battery was not covered under the warranty given still the same was replaced. Defect in battery cannot be construed as manufacturing defect in the car. Alleged over-heating in the engine was caused due to unauthorized fitment of AC in the car by respondent No. 1 and there was breach of clause 4 (f) of the warranty conditions on her part. We heard Ms. Astha Tyagi for appellant and K.P.S. Rao for respondent No. 1.

4. THE State Commission held the appellant and respondent No. 2 guilty of unfair trade practice for having sold an old car to respondent No. 1. Conclusion in regard to car being old one was reached on grounds of old battery being fitted; paint of the car not being original/genuine and engine of the car being over-heated within a short span of the purchase of car. Copy of warranty is placed at pages 53-55. Bare reading of clause 1 thereof would show that the defect in batteries, bulbs, tyres, tubes and accessories not originally fitted by appellant company are not covered under the warranty. Moreover, defect in battery cannot tantamount to manufacturing defect in a car. Since the defective battery was replaced by respondent No. 2 apparently as a gesture of goodwill though not covered by warranty, it could not have been made one of the grounds for passing the impugned order by the State Commission. Allegation of the paint of the car not being original is based on the report of Sharma Auto Workshop. Bare reading of this report (copy at pages 4-5 of the additional documents filed on 10.11.05) would show that it is undated and does not indicate any manufacturing defect in the car. Qualification of the person issuing this report has not been disclosed therein. It is significant to mention that the affidavit of the person issuing this

report was not filed by way of evidence by respondent No. 1. In absence of affidavit this report which is being challenged by the appellant and respondent No. 2 could not have been taken note of in reaching the conclusion that the car was second hand. This brings us to the defect of over-heating of engine. Respondent No. 2 and appellant allege that at the time of purchase of car by respondent No. 1 no AC was fitted and AC was fitted later on by respondent No. 2. Former part of the plea finds support from the invoice for a sum of Rs.4,16,706/-. Appellant further alleges that it is not responsible for alleged over-heating of the engine caused due to unauthorized fitment of AC by respondent No. 1 under clause 4 (f) of the warranty. During the course of arguments our attention was additionally invited on behalf of appellant to clause 4 (b) of the warranty conditions. Both the clauses which are material, are reproduced below:- This warranty shall not apply to: a) b) Any defective part or parts, which in the opinion of the company, has or have been injured by wear and tear or by any form whatsoever, improper use of or from any alteration whatsoever to the car. c) f) Any car in or to which any part or accessories not manufactured and/or sold by the company, has been used or affixed.

In view of these clauses, appellant company is not responsible for the alleged over-heating of the engine because of fitment of AC in the car after its purchase by respondent No. 1. Over-heating of engine, thus, could not have been validly made as a ground for reaching the conclusion that the car sold to respondent No. 1 was second hand. Order passed by State Commission, therefore, being legally erroneous deserves to be set aside. Accordingly, the appeal is accepted and order dated 25.10.99 is set aside and complaint dismissed. No orders as to cost.