
(2000) 07 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

INDRANI MUKHERJEE

APPELLANT

Vs

Ashok Leyland Ltd.

RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:

Citation : 2000 2 CLT 569 : 2000 2 CPJ 605 : 2000 3 CPR 143

Hon'ble Judges : S.C.Datta , Shilpi Majumder , D.Karformas J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant has approached this Commission praying for compensation for the sum of Rs. 19,81,060/- for supplying an inherently defective chassis with below gross weight capacity vis-a-vis its declared specification.

2. THE case of the complainant in short, is that she is the sole proprietor of M/s. Indrani Mukherjee and others having its registered office at Dum Dum Park (P.S. Lake Town, Calcutta). Opposite party-1 is a Company carrying on business of manufacturing vehicles whereas opposite party-2 is its main dealer in West Bengal. The complainant was selected as one of the Contractors by M/s. Indian Oil Corporation for carrying on bulk L.P.G. business on joint ownership basis with the said Company and at their instance she purchased an Ashok Leyland Taurus, Mark-II-2516/1-180 wheel base goods chassis on 29.4.1991 at the cost of Rs. 5,06,991.64 from opposite party-1 through opposite party-2 who represented that the gross vehicle weight capacity of the said chassis was 25 M.Ts. as per recommendation of M/s. Indian Oil Corporation. The complainant purchased the said chassis on obtaining loan from the West Bengal Financial Corporation (opposite party-3) and the said vehicle was hypothecated to it. Initially model No. 25T46-180 wheel base was chosen by the complainant but the same being out of stock the complainant purchased Taurus Mark-II 2516-180 vehicle. The complainant was told that the said chassis would run smoothly and would give better performance than the previously applied model. On such assurance the complainant purchased the same vehicle and obtained delivery thereof. The stipulation with the Indian Oil Corporation was that the latter would supply 10.00

M.Ts. Pressure Vessel (Tank) for carrying bulk L.P.G. in the said Tank. But the Corporation having failed to supply the said Pressure Tank the complainant could not start the business and ply the vehicle upto 14.11.1991.

During the period for which the vehicle remained idle due to non-supply of pressure vessel, the complainant noticed some defects in the vehicle. The complainant brought the same to the notice of the opposite parties who repaired it only on receipt of money, though it was within the warranty period. Even after the said repair, the vehicle started giving trouble to her and various defects in the vehicle surfaced on its journey from Barauni to Kalyani. The complainant noticed that the spring leaves of the Chassis had got totally flat, almost touching the body off and on. Opposite party-1 got some of the defects removed, but did not care to repair the spring leaves. On the occasion, the complainant was forced to get the vehicle repaired from roadside workshop as the workshop of opposite party-2 was closed. Various correspondences were exchanged but with no result. The vehicle developed trouble quite often. The complainant alleges that the opposite party has practised fraud upon her by supplying totally defective chassis with false sales certificate and Road-worthy Certificate. She further alleges that the gross weight capacity of the vehicle was much less than the declared capacity and consequently she had to face difficulties. The complainant had to incur a total expenditure of Rs. 60,000/- for repairing the vehicle on numerous occasions. The opposite party-1 having finally refused to repair the vehicle on the ground that the warranty period of the vehicle had expired, the complainant approached the Forum claiming compensation which is mentioned hereinabove. It is claimed that because of practice of fraud and unfair practice on the part of opposite party her business had become totally jeopardised.

3. THE case is contested by opposite party-1 by filing a written version wherein the allegations contained in the complaint petition have been denied and disputed. THE maintainability of the case has been challenged on the ground that the complainant cannot be regarded as a consumer inasmuch as she has purchased the vehicle in question for commercial purpose. Accordingly to the opposite party the complainant has also instituted a complaint against the Indian Oil Corporation for the self-same alleged losses sustained by her during the self-same period before this Commission which was eventually allowed with cost of the vehicle. THE matter is now pending before the Appellate Court and as such the complainant cannot be allowed to obtain double compensation for the vehicle in question. THE opposite party states that the complainant has altered and or interfered with the design and structure of the vehicle in question and has misused the same. So, the alleged losses, if any, sustained by the complainant are due to her own lapse. According to the opposite party the chassis purchased by the complainant was required to be used by her strictly in accordance with the specifications. It has been stated further that in the complaint against Indian Oil Corporation the complainant inter alia admitted that a defective, gas tank filled with mud and slush was lying in a jungle in a dilapidated condition and was recovered by the complainant at Kalyani on 24.7.1991. THE said Tanker had no

previous explosive licence but the Indian Oil Corporation in collusion with the complainant forged an explosive licence for the said defective tank. THE complainant allowed the said Tank to be loaded on 8.10.1991 without any previous experience. According to the opposite party the defects complained of are of routine maintenance issues. As per usual practice, the dealer replaced the spare parts during the warranty period. It has been claimed that opposite party has a very large network of service centres even on the highways in this contrary. But despite this the vehicle was taken to a roadside garage by the complainant. Accordingly, the opposite party claims that by virtue of the terms and conditions of warranty the complainant is not entitled to get any compensation. According to the opposite party, the excess fuel consumption is not a manufacturing defect and is not covered under warranty. According to the opposite party the vehicle had undergone substantial structural changes at the instance of the complainant and so they are not covered under the terms of warranty. It is, further, claimed that the chassis supplied to the complainant was perfectly in order and released after stringent test and checking by the Automobile Research Authority of India and as such there is no scope to complain about defective nature of the chassis. In view of the above, the opposite party prayed for dismissal of the case. Decision It appears that the question about maintainability of the case was raised at the early stage of hearing of the case. It was contended by the opposite party that since the purchase of the vehicle was made for commercial purpose, the complainant cannot be regarded as a consumer so as to take advantage of the provisions of the Consumer Protection Act. It appears that vide order dated 25.8.1995, this Commission decided the question in favour of the complainant and held that the complaint petition was maintainable under the Consumer Protection Act. Therefore, this question cannot be allowed to be agitated. So far as this Commission is concerned, the decision in this regard is final and conclusive.

4. NOW coming to the merit of the case it is noticed that the complainant purchased the vehicle from opposite party-1 through opposite party-2 for valuable consideration on obtaining loan from the West Bengal Financial Corporation. At present, there is no dispute with regard to the Model of the vehicle and the capacity of the chassis. It is not disputed that the complainant purchased the vehicle for carrying L.P.G. in bulk on behalf of the I.O.C. It transpires that the said Corporation was required to fit the Pressure Tank in the Chassis so as to make it ready for use for which the parties entered into agreement. The chassis was purchased on 29.4.1991 and it remained in the custody of I.O.C. upto 14.11.1991. During this period, the vehicle remained idle. After the chassis was fitted with Pressure Vessel, it was put to use. The complainant could not use the vehicle for about 7-months. The complainant speaks of numerous defects in the vehicle while on road. She states that the defects were not repaired nor attended to by the opposite party resulting in loss of business. There is no cogent material to hold that the chassis suffered from any inherent defect in the structure. No expert has been consulted nor examined

to support the complaint about defective nature of the chassis. There was, of course, some trouble with the vehicle while on road. According to the opposite party the complainant got the vehicle repaired by a roadside garage not approved or authorised by them and as such as per terms of the warranty the opposite party was not responsible for any alleged loss. It has been stated that they have network of service centres throughout the length and breadth of the country. But the complainant chose not to get the vehicle repaired through any of those service centres. The learned Lawyer appearing for the opposite party has drawn our attention to various clauses in the Manufacturer's Guarantee. On a reference to it, we noticed that the period of guarantee is for 12 months from the date on which the chassis was first registered or put into commercial use or 64,000 kms. whichever is earlier. Incidentally, it may be mentioned that the chassis was purchased on 29.4.1991 and, therefore, the guarantee is to run up to 28.4.1992. In the meantime, as per the contract with the I.O.C. the vehicle was sent to the latter for fixing the pressure vessel and it remained with the I.O.C. till 14.11.1991. It is now clear that the complainant sued the I.O.C. claiming compensation for damage to the vehicle before this Commission and obtained an award for about Rs. 5 lakhs. The documents in this regard are not readily available. This information is gathered from the submission of the learned Counsel for the opposite party. It is also gathered that an appeal has been filed against the order of this Commission awarding compensation for damage to the vehicle in question and the said appeal is still pending. It is the case of the opposite party that in the said case against the I.O.C. the complainant inter alia admitted that a defective gas tank filled with mud and slush was lying in jungle in a dilapidated condition and was procured by the complainant at Kalyani on 24.7.1991. This important fact has been stated by the opposite party in their counter but there has been no attempt to challenge the averment thus made. The entire fact was suppressed by the complainant and it has been brought out by the opposite party in their written version. It would appear, therefore, that the complainant has not come with a clean hand. She has got compensation for the damage to the vehicle once before the Commission and has again instituted this case claiming compensation raising dispute about manufacturing defects. As noticed earlier, there is no cogent material to hold that there was in fact such a defect. Learned Counsel for the opposite party submits that in view of the circumstances, the Commission should not entertain the claim of the complainant. It is of course true that the vehicle developed trouble while on the way from Barauni to Kalyani and once the complainant got the defect repaired through a roadside garage. The learned Counsel for the opposite party has drawn our attention to Clause 8(d) of the warranty to contend that the vehicle which has been altered or to which additions have been made without the written consent of the Company will not get the benefit of this guarantee. According to the opposite party, the trouble which the complainant spoke of occurred due to natural wear and tear. It further states that excess fuel consumption is not a manufacturing defect and as such it is not covered under Warranty. It is claimed that as a gesture of goodwill and to bring fair name of the Company they have

affected minor repair to the vehicle even after the expiry of warranty period. We have discussed at length, the facts involved in this case and the way the case was proceeded with by the complainant. She has suppressed the fact that she had obtained award for damages against Indian Oil Corporation. The vehicle was found lying abandoned in a jungle near Kalyani in a dilapidated condition and was later recovered by the complainant. The complainant could not show any paper to show that there was manufacturing defect in the vehicle resulting in her loss of business. This being the position we are unable to hold that the complainant has succeeded in establishing her case. So, she is not entitled to get any relief in this case. The case fails and is hereby dismissed on contest. Complaint dismissed.