
(1995) 09 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

JAIPUR RURAL HEALTH And DEVELOPMENT TRUST	APPELLANT
Vs	
TATA ENGINEERING LOCOMOTIVE CO. LTD.	RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Citation : 1996 1 CPC 484 : 1996 1 CPR 221 : 1996 2 CLT 181 : 1996 3 CPJ 69

Hon'ble Judges : N.C.Sharma , Firoza Bano J.

Final Decision : Complaint allowed

Judgement

1. JAIPUR Rural Health & Development Trust, JAIPUR is an institution registered under Rajasthan Public Act, 1959 and is engaged in various activities including providing of health and medical services to rural folk in family welfare and also educating rural people in prevention of spread of diseases. For this purpose the Trust has engaged a team of Doctors to regularly visit rural areas to achieve the objectives of the Trust. In order to carry on its activities smoothly and with greater efficiency, the complainant Trust decided to purchase two 207 Tata Mobile Vans from M/s. Roshan Motors-opposite party No. 1 and these two vehicles were purchased for using them as Ambulance/Mobile clinics for Rs. 5.18 lacs. An amount of Rs. 85,000/- was spent on fabrication of bodies on the chassis supplied. Opposite party No. 2 supplied two Chassis No. 374005954820 with Engine No. 483 DL 41530277 and Chassis No. 374005954810 with Engine No. 483 DL 41534510 on 19.12.91 on payment through cheque before delivery.

2. IT is alleged by the complainant Trust that as per information available to it, the consumption of diesel for these vehicles was 12-15 Kms. per litre. IT is further alleged that in both these vehicles supplied to the complainant Trust some defects appeared as are enumerated in para 5 of the complaint. With respect to vehicle with engine No. 483 DL 41530277, following defects are mentioned :- (a) The engine of vehicle got rigid/frozen on 15.1.92 and remained in the workshop of the opposite party No. 2 upto 21.2.1992. (b) One side wear of tyres due to defective alignment which resulted in significant damage to the tyres and reduced their life. (c) The average consumption of diesel which should

have been 12-15 Kms. per litre was between 9-11 Kms. per litre. With respect to second vehicle having engine No. 483 DL 41534510, it is alleged that following defects appeared in the vehicle : (a) Break-down of brakes. (b) Defective alignment resulting in undue wear and tear of one side of tyres. (c) Seizure of engine on 12.5.1992 despite efforts made by technician sent by opposite party No. 2, the vehicle could not be started and had to be towed 67 Kms. from Jaipur. (d) Average, consumption of diesel remained between 9-11 kms. per litre.

As a result of these defects the work of the complainant suffered because there was frequent break downs of the vehicle due to manufacturing defects. Information was sent to opposite party No. 2 when the engine of the vehicle seized. Vehicle was sent to the workshop of opposite party No. 2 at Malviya Nagar, Jaipur for repairs and it remained at the workshop from 15.1.1992 to 21.2.1992. It is further stated that the complainant Trust due to purchase of these defective vehicles had undergone extra liability of expenditure of about Rs. 10,000/- per month in order to give better and timely facilities to the rural people. In addition to that, the salary paid to the staff amounting to Rs.11,500/- went in waste because the medical and paramedical staff got stranded in the way and could not reach the rural destination. The complainant Trust, therefore, prayed for the replacement of defective vehicle by a free from defect new or in the alternative refund of the cost of Rs.6,04,540/- alongwith interest @ 21% per annum. They have also claimed compensation for the expenditure incurred on the salary and wages of two drivers kept on the vehicles, cost of extra diesel consumed, wages and salary of medical staff traveling in the vehicle who are stranded in the way and interest @ 21% per annum for the money blocked.

Upon reference being made, both the opposite parties filed their respective versions. They have also raised certain preliminary objections. In the preliminary objections it is stated that the complainant is a Trust and it has filed the complaint through its Administrative Officer. No letter of authorisation or any resolution of the Trust had been filed to show that the Administrative Officer had the competence to file the complaint. It is next stated that the complainant is not a "consumer" under the definition assigned to this term by the Consumer Protection Act, 1986. It is further stated that joint complaint for two vehicles is not maintainable. On the merits of the case, it is pleaded that as per the advertisement, the average consumption of Tata Mobile Van is upto 12 kms. per litre in ideal conditions. It is stated that there was no negligence on the part of the opposite parties. Blue requisition dated 17.1.92 was raised for Cylinder Head assembly and related parts. The parts were received and repairs were made on 21.2.1992. Necessary action regarding wheel alignments was taken. As regards the other vehicle, blue requisition dated 14.5.92 was raised and repairs were carried out and completed on 30.5.92.

3. JAIPUR Rural Health & Development Trust is a public Trust registered under Rajasthan Public Trust Act, 1959 (Rajasthan Act No. 42/ 59). The Registration was made by the Additional Commissioner Devasthan, JAIPUR Division. The

objectives of the trust inter-alia are provision of medical facilities to the rural people through organisation of health services including immunization, family planning, sanitation, medicine and treatment. For this object the complainant Trust had purchased two mobile vans from M/s. Roshan Motors, JAIPUR opposite party No. 2. Tata Engineering Locomotive Company Ltd. (opposite party No. 1) is the manufacturer of these vehicles. The complainant has filed a photo copy of the order dated 5.8.92 of the Chairman of JAIPUR Rural Health and Development Trust whereby the Chairman of the Trust authorised Shri D.R. Jain, Administrative Officer of the Trust to file a suit against the opposite parties for replacement of the vehicles and for claiming compensation before the State Commission. The Trust being registered under the Rajasthan Public Trust Act, 1959 is competent to file a complaint in its name and since the Administrative Officer has been authorised to file this complaint, the complaint is competent. The complainant is also a consumer. It cannot be said that the two vehicles were purchased by the Trust for commercial purposes. We may refer to a decision of the Haryana State Consumer Disputes Redressal Commission in the case of Bhagwan Bhatia Udyog Mandal v. Cheema Engineering Services reported in III (1993) CPJ 1466. In this case the complainant was a Society registered under the Co-operative Societies Act. The complainant Society had purchased a machine called "Brikman" manufactured by the opposite party which was stated to manufacture excellent bricks of uniform size out of mud, straightaway without requiring any kneading etc. The Haryana State Commission held that the primary object of the complainant Society was to start, encourage, assist and carry on Khadi and Village Industries to render assistance as may be necessary to persons engaged in Khadi and Village Industries, to organise and aid societies and registered institutions for Khadi & Village Industries and to conduct training centres etc. The income and property of the society shall be applied solely towards the promotion of the objects of the society and no part thereof shall be paid or transferred by way of profit to the members of the society. The State Commission held that the activity of the complainant-society was not such a large scale as to merit the label that the purchase of the machine was necessarily for a commercial purpose. The test of a close and direct nexus could not be established by the opposite party. It was, therefore, held that the complainant-society in that case was consumer competent to file the complaint. As has already been stated, the complainant in the complaint is a public charitable trust based on the pattern of the Tribhuvandas Foundation of Anand and it seeks to provide medical facilities, self-employment schemes and vocational training. The Trust carries on the work of establishing, maintaining and promoting health services through dispensaries, hospitals and nursing homes. It extends its charitable hand to the rural poor and for that it carries medical facilities to distant villages, provides immunization camp, family planning facilities, mother & child welfare services and nutrition programmes. All these are charitable purpose carried out by this charitable Trust. It cannot, therefore, be said that the complainant is carrying out its activities with a profit earning motive. The above mentioned purposes cannot be said to be a "commercial

purpose". As to the filing of the single complaint with respect to two vehicles, the consumer and the opposite parties being the same, a single complaint can be filed with respect to the two vehicles. Thus the preliminary objections raised by the opposite parties are negative. On the merits of the case, it may be mentioned that opposite party No. 1 had given warranty for Tata Mobile (207) warranting that the vehicle and parts thereof manufactured by it are free from defect in material and workmanship. This warranty was for a period of 18 months from the date of the sale of the vehicle, irrespective of the distance covered. The opposite party No. 1 had undertaken the obligations under the warranty of repairing or replacing free of charge, such parts of the vehicle which, in their opinion were defective and were returned to opposite party No. 1 or to its dealer within the period of the warranty. The parts so repaired or were also warranted for quality and workmanship but such warranty was to be co-terminus with the main warranty. The warranty did not apply to such parts as tyres, batteries, rubber parts, electrical equipments and fuel injection pumps not manufactured by opposite party No. 1, but supplied by other parties. It is clear from Annexure 14 dated 16.1.1992 that the Administrative Officer of the complainant had sent a letter to opposite party No. 2 that one of the vehicle had become out of order and when it was shown to the Foreman of opposite party No. 2, he told that the engine of the vehicle had seized. It was also mentioned that by 15.1.92, this vehicle had only run 2 kms. Information in this regard was also sent to the Area Officer, Telco Ltd., Jaipur on 17.1.92 vide Annexure.5. Telco Ltd., Senior Zonal Service Representative sent a letter dated 24.1.92 to the complainant mentioning that due investigation had been carried out with respect to the vehicle and spare parts for repairs were being procured by the dealer M/s. Roshan Motors, Jaipur and as soon as the parts were arranged, the vehicle will be attended to on top priority basis. On 18.2.1992 Roshan Motors, Jaipur sent a letter Annexure-7 to the complainant whereby it regretted the delay and informed the complainant that the vehicle was now ready and the same may be collected. This is with regard to his first vehicle. On 15/17.5.92 the Hony. Secretary of the complainant Trust sent a letter to Shri Ratan Tata of Tata Engineering & Locomotive, Bombay wherein he mentioned that the second vehicle also needed the same repairs as has been carried on in the first vehicle and will have to remain at the workshop for over a month as was the case in relation to the first vehicle. Request was made that both the vehicles may be replaced.

4. IT may here be mentioned that it is not in dispute between the parties that the engine of first vehicle had seized on 15.1.92 and it was sent to the workshop of opposite party No. 2 on that day. Opposite party No. 2 did not have the spare parts for repair ready and the same obtained by it from the manufacturer the vehicle was repaired on 18.2.92 and its delivery was taken by the complainant on 21.2.92. Thus for a period of about one month and 6 days the first vehicle remained with opposite party No. 2 for repairs and replacement of parts. IT is admitted by opposite party No. 1 that requisition dated 17.1.92 was raised for

Cylinder Head Assembly and related parts and the repair was made by 21.2.92. IT is also admitted in the version that requisition dated 14.5.1992 was raised in relation to the second vehicle and the repairs were carried out and completed in about 16 days on 30.5.92. From the above facts, it would appear that whatever defects there were in the two vehicles were repaired by the opposite parties within the warranty period free of charge. We had examined the log book maintained by the complainant with respect to the two vehicles on the date we heard arguments in this complaint on 25.7.95. IT appears from the log book maintained by the complainant that one of the vehicles had already run 86763 kms. and the second vehicle 95448 kms. upto 24.7.95. IT would thus appear that within a period of about 3 years and 5 months, the two vehicles had already run to the above extent. IT cannot be, therefore, said that the two vehicles suffered manufacturing defects to the extent that they need replacement by new vehicles. All that can be said is that the two vehicles had defective parts on account of which the engine of the vehicles seized. The opposite parties made the necessary replacement of the parts and also carried out repairs in February, 1992 and in May, 1992. There is nothing to show that after these replacements were made, there was any trouble in the two vehicles. The fact that the two vehicles had run to about Rs. 90,000/- to one lakh kms. in about 3 years and five months indicate that after replacement of the parts, there was no defect in the vehicles. The complainant is, therefore, not entitled to the replacement of the two vehicles and that also after 3 years that the 2 vehicles had sufficiently run. All that can be said is that there were some defective parts in the vehicles and due to which the engine of the two vehicles seized. In the case of the first vehicle within one month of the purchase and in the case of the second vehicle within 5 months of the purchase. The first vehicle remained at the workshop of opposite party No. 2 for one month and 6 days and the other vehicle remained at the workshop for 16 days. The delay in the first vehicle took place because Roshan Motors, who is authorised dealer of opposite party No. 1 did not have the spare parts with it and it had to procure the spare parts from opposite party No. 1. When a manufacturer like Tata Engineering Locomotive Company appoints an authorised dealer of its vehicle, it is for it to keep available the spare parts with its dealer so that the warranty obligations may be fulfilled by the dealer promptly. The complainant Trust is, therefore, entitled to reasonable compensation for delay in replacing the defective parts caused by the opposite parties of one month and 6 days. We are of the view that opposite parties should pay to the complainant compensation of Rs. 20,000/- for delay in replacing the defective parts. As regards the second vehicle, the repair was carried out within 15 days, for that the opposite parties should pay Rs. 5,000/- as compensation to the complainant Trust. We, therefore, partly allow this complaint and direct the opposite parties to pay a total compensation of Rs. 25,000/- to the complainant within one month. Since the complainant has failed in its case for replacement of two vehicles, we leave the parties to bear their own costs in the complaint. Complaint allowed.