
(1998) 09 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Jasbir Singh Grewal Complaina

APPELLANT

Vs

Mahindra Ford India Ltd

RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Citation : 1998 2 CPC 519 : 1999 1 CPJ 48

Hon'ble Judges : J.B.GARG , SADA NAND , P.OJHA J.

Judgement

1. JASBIR Singh Grewal has alleged that the respondents gave wide publicity to availability and sale of Ford Escort 1.8 LT (Diesel) motor car. He booked one in the month of September, 1996 on depositing a sum of Rs. 35,000/- and a priority No. RL -3/ 000168 was allotted to him. On 2.6.1997 he was informed that the motor car was ready for delivery. However the motor car was ultimately delivered to him on 14.9.1998. It has further been averred that after a few days he noticed the motor car delivered to him was not a brand new but it was an old, accidented and a repainted car. So it was not got registered. This grievance was brought to the notice of the officials of respondent No. 2. A registered letter dated 25.9.1997 was also despatched in this regard. The motor car was inspected by Ms. Shivani, Mr. M.R. Acharya and Mr. Kapil and they were convinced that it was a repainted one and advised him to wait for some time. Subsequently the respondents or its employee declined even to acknowledge or issue receipt in respect of the complaints conveyed. He also sent a complaint to Ford Motor Company, London through a fax message dated 10.10.1997 (Annexure C -6). He also served notice dated 17.10.1997 (Annexure C -7). It has further been averred that the delivery of an old, accidented and repainted motor car and failure in its replacement caused great harassment, loss and humiliation. Briefly the relief claimed is as under: (i) That the respondents be directed to replace the old, accidented and repainted car delivered to the complainant with a proper brand new car or in the alternative the amount paid be refunded alongwith interest @24% p.a. (ii) Damages in the sum of Rs. 6.00 lacs for causing mental agony, harassment, humiliation and loss of business.

2. A reply on behalf of respondent No. 1 has been filed wherein it has been averred that the motor car supplied to the complainant was a brand new one from the factory inasmuch as it was received only a week before the delivery to the complainant and it was not old, accidented and repainted one. An order from the complainant was received by respondent No. 2 who is the dealer on 5.9.1997. The motorcar was shipped to the dealer on 8.9.1997. It has been averred that respondent No. 1 sells cars to the dealers against advance payment based on the order placed. In support of the complaint affidavits of Mr. M.R. Acharya and the complainant himself are also on the record. At the time of delivery of the car to the complainant Mr. Acharya was Works Manager with respondent No. 2 and he has deposed that before the delivery of the car to the complainant he personally inspected the car on 13.9.1997 and it was in a damaged condition and necessary repairs and painting work was done on 13/14.9.1997. Paras 2 to 4 of the affidavit of Shri M.R. Acharya are reproduced as under : 2. "That the deponent had personally inspected the car in question on 13.9.1997 in the workshop of opposite party No. 2. On physical inspection, the car was found to be in damaged condition. 3. That the necessary repairs and painting to the car in question was carried out in the workshop of opposite party No. 2 at Chandigarh under my personal supervision on 13.9.1997 and 14.9.1997.

3. THAT on completion of the necessary repairs and painting to the car in question, the car was delivered to the complainant in the afternoon on 14.9.1997 by Ms. Shivani from the showroom of opposite party No. 2 in the presence of the deponent." Para 7 of the affidavit of the complainant Jasbir Singh Grewal is also reproduced as under :

4. "THAT however, just a few days after taking the delivery of the aforesaid car, the deponent was shocked when the deponent discovered that the car delivered to him was not a brand new car, but was an old, accidental and repainted car. After having discovered the afore said fact, the deponent immediately brought the matter to the personal notice of the concerned officials of opposite party No. 2. Both the opposite parties were informed by the deponent through his letter dated 25.9.1997 (Annexure C -2) by registered post." The respondent No. 1 could not rebut the above evidence produced by the complainant except on stressing this point that the car in question was supplied to the dealer on 8.9.1997 from the factory and it was also cleared from Central Excise. During the course of arguments, the learned Counsel for respondent No. 1 argued that if there was any delay in delivery of the car it was on the part of respondent No. 2 and the car in question was supplied to the dealer for further delivery to the complainant in perfect condition and it was a brand new car. This shows that the accident must have occurred between the period 8.9.1997 to 13.9.1997. It is well established that the motor car which met with an accident or was otherwise damaged prior to its delivery to the complainant on 14.9.1997. In this case the proprietor of respondent No. 2, the local concern who physically delivered the vehicle to the complainant has not come forward to oppose the complaint and rebut the affidavit of the complainant and other evidence produced by him. The

complainant did not get the vehicle registered from the Registration Authority and it remains un-utilised almost from the time of purchase. The respondents who received a huge sum of Rs. 7,00,181 / - were expected to deliver a brand new car without any defect whatsoever. If it had met with an accident or if it was repaired they were expected to bring it to the notice of the complainant so that he could have the opportunity of declining the delivery there and then. Thus deficiency of the respondents has been well established. It is ordered that respondents shall refund the sum of Rs. 7,00,181/ - together with interest @ 18% per annum from the date of deposit till realisation or deliver a new car in lieu of the car now in question within a period of three months. The complainant is also entitled to costs of Rs. 5,00/ -. Complaint disposed of.