

(2009) 07 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Jeewan Motors (P) Ltd.

APPELLANT

Vs

Tariq Irshad And Anr.

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Citation : 2009 4 CPJ 150

Hon'ble Judges : B.N.P.SINGH , P.D.SHENOY J.

Final Decision : R.Ps. dismissed.

Judgement

1. MR . Tariq Irshad was the complainant before the District Forum. He had purchased a Maruti Gypsy (King ST said to be an improved model of 1300 cc) from the Revision Petitioners on 2.7.1998. The main grievance of the complainant was that the vehicle was not picking up the desired speed and could not be driven beyond 90 -95 kms. per hour (for short kmph"). The vehicle was checked by the dealer, M/s. Jeevan Motors (P) Ltd. and some work was done on 18th August, 1998 as well as on 20th August, 1998 but there was no improvement. Subsequently, the dealer informed vide their letter dated 3rd December, 1998 that they are taking up the matter with the Maruti Udyog Ltd. (manufacturer) and requesting their service representative to visit and check the vehicle. Finally, on 8.2.1999 the complainant was informed that they had already carried out a road drive test of the vehicle on 8th December, 1998 and it was found that the vehicle could be driven upto the speed of 100 kmph. It was further explained that because of road condition and safety factor, no effort was made to drive the vehicle beyond 100 kmph.

2. DISSATISFI ED with the lack of remedial measures taken by the dealer and the manufacturer, the complainant approached the District Forum stating that there is a manufacturing defect in the vehicle and prayed for replacement of the same. The dealer disowned its responsibility stating that the responsibility regarding manufacturing defect lay only with the manufacturer. The District Forum having dismissed the complaint, the complainant approached the State Commission in appeal.

3. THE State Commission observed that the very fact that dealer had informed the complainant through its letter dated 3rd December, 1998 that the matter is being taken up with the manufacturer, clearly shows that the dealer was satisfied with the genuineness of the complaint of the complainant and since the defect could not be remedied at their level, the matter was taken up with the manufacturer. This is supported by the letter dated 20th December, 1998, written by the manufacturer to the complainant assuring him that the action is being taken in the matter. To the assertion of the manufacturer that their engineer along with some officer of the dealer had carried out test drive of the vehicle and it was found that the vehicle could be driven at a speed of 100 kmph the complainant has denied that any such test drive was carried out at Bhopal or that the vehicle could be driven at a speed of 100 kmph. The State Commission further observed that the letter dated 8.2.1999 relating to the test drive is not free from suspicion and what is stated in the letter has not been substantiated in evidence by filing a particular affidavit of a person who had performed the test drive. Even Mr. Bargale, engineer of the dealer who was supposed to be present at the time of test drive has not filed any affidavit. Further normally such test drive should have been conducted in the presence of the complainant, which has not been done. The State Commission held that this was a case of *res ipsa loquitur* as the facts spoke for themselves. Regarding the contention of the learned Counsel for the dealer that for manufacturing defect only the manufacturer held responsible has been clarified by the State Commission relying upon the Judgment of the Hon"ble Supreme Court that both the manufacturer as well as the dealer are jointly and severally responsible. Accordingly, the State Commission directed that the complainant shall deliver the car at the workshop of the dealer within 30 days of the passing of the order and necessary remedial measures shall be taken by both the dealer and the manufacturer and the car showing the desired performance in the pick up and the speed shall be delivered back to the complainant within next 30 days. In case the defect is not removed, the respondents shall either provide the complainant a new car or repay the entire price amount of Rs. 3,49,631 with interest @ 6% p.a. and shall also pay Rs. 10,000 as general damages to the complainant for the harassment and mental agony caused to him. The dealer and manufacturer were directed to pay cost of Rs. 2,000 also.

4. AGGRIEVED by the order of the State Commission, both the dealer and the manufacturer have filed Revision Petitions before us. Submissions of the learned Senior Counsel for the manufacturer

5. MR . T.K. Ganju submitted that no expert evidence has been produced by the complainant as provided under Section 13 of the Consumer Protection Act. In this case it is important to note the road condition. Nowhere in India even the highways permit driving of the vehicle beyond 80 kmph. Hence driving beyond 80 kmph is an offence. He submitted that in India conditions of the road are bad and in the city, one cannot drive for more than 50 kms. He drew our attention to the job cards wherein it is mentioned Glass Windshield" repair/replacement and

Filter Assy Oil, Fuel Filter, spark plug repair, etc.

6. MR . T.K. Ganju, Sr. Advocate further submitted that the warranty is for one year from the date of purchase. It is only for replacement of the parts and not for replacement of the vehicle or for refund of the amount. Under no circumstances the vehicle can be replaced or the value of the car can be refunded. He submitted that the car is not used for racing purposes. Till now the car has been used for 11 years. He further submitted that till the end of 2004, the vehicle had run at 66,555 kilometres.

7. HE quoted the Judgment of the National Commission in Maruti Udyog Ltd. v. Atul Bharadwaj and Anr., I (2009) CPJ 270 (NC)=R.P. No. 2366 of 2004 dated 29th January, 2009, wherein on an inspection by the staff of the workshop of the respondent, the following defects were found: (i) Steering wobbling while brake apply;

(ii) Leaf spring noisy;

(iii) All doors noisy;

(iv) Pick up low;

(v) Engine missing problem;

(vi) Both sliding doors opening/closing hard;

(vii) Brake juddering/jittering - which has been source of mental agony as and when the vehicle was put on the road.

8. THE defects are mentioned in the job card. The vehicle was taken to the workshop ten times but the defects continued till the filing of the complaint. The District Forum by majority judgment held that the defects pointed out by the complainant are not inherent or manufacturing defects, which warrant the replacement of the car. The State Commission held that during a short span of 10 months, the vehicle was taken to the workshop 10 times for major repairs, which could not be removed. Therefore, directions were given for refund of the value of the vehicle. The National Commission in this case allowed the Revision Petition and directed award of compensation of Rs. 30,000 along with cost of Rs. 2,500 to be paid to the complainant. Submission of the learned Counsel for the Complainant

9. THE first complaint was made by the complainant on 31.8.1998. There is no question of District Forum's taking action under Section 13 of the Consumer Protection Act as the dealer himself had written a letter to the manufacturer on 3rd December, 1998 as follows: "This has reference to your letter dated 30.11.1998 regarding your Gypsy King not attaining the speed more than 95 kms.

In this connection please be informed that we are taking up matter with Maruti Udyog Ltd. and requesting their service representative to visit and check your

Gypsy. Till then you are requested to please bear with us.

Thanking you and assuring you of our best services at all times."

10. HE submitted that except mentioning that they had conducted a test drive, there is no detailed report regarding the same. No affidavit of the person who conducted the test drive or the dealer's representative who allegedly accompanied the manufacturer's representative during the test drive has been filed. Submissions of the learned Counsel for the dealer

11. THE learned Counsel for the dealer generally supported the arguments of the learned Counsel for the manufacturer except that for a manufacturing defect dealer cannot be held responsible and for which liability is solely of the manufacturer. Findings

12. AS the complainant could not get relief from the dealer and the manufacturer, he was compelled to file a complaint before the District Forum and as the District Forum dismissed the complaint, he had to file an appeal before the State Commission and the manufacturer and the dealer did not comply with the orders of the State Commission. The complainant was forced to litigate at all levels of Consumer Fora, hence 11 years have lapsed. Therefore, to argue that now the vehicle has covered 66,500 kms. and, therefore, the vehicle cannot be replaced does not hold water.

13. IT is seen from the records of the case that on 10.9.1998 the complainant had taken the vehicle for repairs. He had clearly mentioned that the vehicle was not going beyond 100 kmph. The vehicle was returned on 11.9.1998 and no amount was charged and no proof was given that the vehicle could be run beyond 100 kmph.

14. THE case quoted by the learned Counsel for the manufacturer is entirely different from the case on hand because it does not relate to the speed at which the vehicle could be driven. It is a well-known fact that the speedometer indicates more than 100 kms. per hour. It is not the case of the manufacturer or the dealer that they have published in the brochure or in any advertisement that though the speedometer shows the capacity of Maruti Gypsy to cover more than 100 kms. per hour, the vehicle cannot be driven beyond 100 kms per hour.

15. THE main issue to be decided in this case is whether the Maruti Gypsy sold by the manufacturer through the dealer to the complainant could be driven beyond 100 kmph. On 31.8.1998 the complainant had written a letter to M/s. Jeevan Motors (Pvt.) Ltd. stating that the vehicle was got checked by Mr. Thomas, representative of the dealer on 18.8.1998 and the vehicle could not go beyond 95 kmph. On 18.9.1998 he reiterated the same and stated that it was again tested on 10.9.1998 by the workshop Incharge, Mr. Bargle and the vehicle did not go beyond 95 kmph. Hence he said there is manufacturing defect. Further he wrote another letter dated 30.11.1998 wherein he again reiterated the poor speed performance of the vehicle. He also stated that two Maruti Gypsy

vehicles bought by him earlier in 1994 and 1996 had both crossed 120 kmph. Copy of this letter was marked to the Customer Service Cell of the manufacturer.

16. ON 3rd December, 1998, the dealer wrote to the complainant stating that they were taking up the matter with the manufacturer requesting their service representative to visit and check the Gypsy. On 18.12.1998, a legal notice was got issued to the dealer with a copy to the manufacturer, which was reiterated on 11.1.1999. On 8.2.1999, a letter was written by Maruti Udyog to the complainant with a copy to the dealer as follows: "During our visit to Bhopal on 8th of December your vehicle was thoroughly inspected by us. Road test was carried out along with Mr. Bargal (WM) of M/s. Jeevan Deep where we have driven the vehicle at 100 km speed and observed no drop in power (speed). Same was conveyed to you over phone. Because of road condition and safety factors we didn't try to drive beyond this speed.

However we understand from our dealer that still you are not satisfied with the pick up for which our dealer was constantly requesting you to send vehicle for further check up along with you but no response from our end. We once again, request you to send your vehicle to above dealers workshop at your earliest."

17. SUBSEQUENT LY , again on 23.2.1999, the complainant has taken up the matter with the manufacturer about non -attaining the speed of 100 kmph. Though the manufacturer has mentioned that Mr. Thomas and Bargle, representatives of the dealer had driven the vehicle and found that it was not attaining the speed beyond 95 kmph, neither Mr. Thomas nor Mr. Bargle had filed an affidavit to contradict this. Further they have not asked the complainant to be present during the test drive. All these clearly show that the vehicle could not attain the speed of 100 kmph and above though the speedometer clearly indicates the higher speed.

18. THIS case is covered by the Judgment of our Commission in the case of Scooters India Ltd. through its Marketing Executive, Lucknow v. Smt. G. Kanakalakshmi and Anr., 2001 (1) CT GJX 0773 NCDRC, wherein five -Member Bench of this Commission dismissed the Revision Petition filed by the manufacturer against the order of the State Commission upholding the order of the District Forum. Gist of the order of the District Forum is reproduced below: "Complaint was that the purchase of the vehicle by the complainant was on representation that it will run 24 kilometres in one litre of petrol. This was not to be so. It could run only for 12 kilometres. Complainant thus alleged deficiency in service. Complainant went to District Forum praying for refund of the amount of Rs. 67,320 being price of the auto. After considering the whole aspect of the matter, District Forum allowed the complaint and directed refund of the amount of Rs. 67,320 along with interest @ 18% per annum from the date of purchase of vehicle till realization. Complainant was also awarded cost of Rs. 600."

19. FURTHER this Commission in the case of Ashok Ramniklal Tolat v. Gallops Pvt. Ltd. and Ors., II (2009) CPJ 63 (NC). (Revision Petition No. 3349 of 2006)

and General Motors India Pvt. Ltd. v. Ashok Ramniklal Tolat, Revision Petition No. 2858 of 2006 reported in observed that M/s. General Motors India Pvt. Ltd. had in their brochure of Chevrolet Forester AWD cars has stated as follows: "introducing a world without borders, an SUV to end all SUVs. That's the new Chevrolet Forester. With the power of 120 horses under its borne unique All - Wheels (AWD), it literally puts the four corners of the earth within your easy reach. It won't just get you there. But get you there in unmatched comfort and luxury by -road or no -road... An SUV to end all SUVs. And..... it will put the four corners of the earth within your each and it won't just get you there every time. But get you're there in unmatched comfort, by road, off -road or no road. ..

However, in the Owner's manual, it was mentioned as follows:

off -road driving.... But please keep in mind that AWD Chevrolet is a passenger car and is neither a conventional off -road vehicle nor an all terrain vehicle.... If the driving through water such as when crossing shallow streams, first check the depth of the water and the water stream bed for firmness and ensure that the bed of stream is flat the water should be shallow enough that it does not reach under carriage."

The complainant, therefore, could not drive this vehicle to Leh -Ladakh, Jammu and Kashmir and Kathmandu.

20. AFTER analysing the case in detail and hearing arguments of the complainant in person and learned Senior Counsel for General Motors India Pvt. Ltd. and going through the bulky records of the case, this Commission had directed the dealer and the manufacturer to pay punitive damages of Rs. 25 lakh apart from directing them to refund the price of the vehicle subject to the petitioner's returning the vehicle to them.

21. THE ratio of this case is applicable to the case under consideration because as per the specification Maruti Suzuki Gypsy King ST -BS III Specifications, the maximum speed indicated is 126 kms./hour. This can be seen from the website of the [www. carewale. com/research/cars /maruti /suzuki/gypsy/king st](http://www.carewale.com/research/cars/maruti/suzuki/gypsy/king-st). Further in the speedometer, also it is indicated 140 kms./hour.

22. TAKING into consideration both the speedometer as well as specification in the website, the vehicle should run at least 126 kms/hour, but it could not run beyond 100 kms/hour. Hence, there is manufacturing defect in the vehicle.

23. THEREFORE , we do not find any merit in these Revision Petitions. Accordingly, these Revision Petitions are dismissed. There shall be no order as to costs. R.Ps. dismissed.