
(2002) 03 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

KESHAB RAM MAHATO

APPELLANT

Vs

Hero Honda Motors Ltd.

RESPONDENT

Date of Decision : 27-03-2002

Acts Referred:

Citation : 2003 1 CPJ 244

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

Final Decision : Appeal dismissed

Judgement

1. THIS is petitioner's appeal against the order of the Forum dismissing the complaint petition.

2. THE petitioner approached the Forum praying inter-alia for refund of the price of the Motor Cycle or for replacement thereof together with appropriate compensation. On 16.9.1998, he purchased a Hero Honda Motor Cycle for a sum of Rs. 39,670/- against a receipt duly granted by OP-2, the local dealer of OP-1. He alleges that ever since the purchase the said Motor Cycle was giving trouble and it was emanating excessive smoke because of certain manufacturing defects. THE said Motor Cycle was sent to the dealer for rectification, for the first time on 13.10.1998. THE said Motor Cycle was covered under a warranty for a period of one year against any defect. THE dealer tried to rectify the problem but failed. THEREafter, the Motor Cycle was sent to the dealer on several other occasions for rectification of the defects but the defects persisted. THE dealer changed the Cyclinder, Piston Ring and Sealvalve Steam etc. But no improvement in the matter of emission of excessive smoke could be noticed. THE petitioner approached the dealer for replacing the said Motor Cycle. But they declined to do so. Accordingly, the petitioner approached the Forum. According to the petitioner the Motor Cycle is lying at the garage of the dealer on and from 6.7.2000. The case was contested by the O.Ps. by filing a joint written statement wherein it has been denied that the Motor Cycle had any manufacturing defect. According to the O.Ps. the petitioner allowed non-expert mechanics for rectification of the troubles which allegedly occurred and this resulted in the present condition of the Motor

Cycle. They claimed that in order to keep up the goodwill of the Company they have duly attended to the complaints of the petitioner and set right the defects to the complete satisfaction of the petitioner and the petitioner obtained delivery of possession of the Motor Cycle on each and every occasion after being satisfied with its performance. They state further that on the request of the petitioner they replaced the Cyclinder, Piston Ring, Sealvalve Steam of the Motor Cycle on 17.5.1999 and after making the trial run the petitioner took delivery of the Motor Cycle on being fully satisfied about its performance. According to them, the Motor Bike emitted smoke gas because of use of adulterated fuel. The Motor Bike is lying at their workshop on the refusal of the petitioner to take it back.

On an analysis of the materials on record, the Forum noticed that there was no deficiency in service on the part of the O.P. and as such dismissed the complaint petition. Hence, the petitioner has preferred this appeal.

3. HEARD learned Counsels for the parties. It is not disputed that the Motor Bike was purchased by the petitioner on 16.8.1998 with a warranty period of one year. During the warranty period, it having emitted excessive smoke, it was sent to the workshop of O.P. 2 on a number of occasions and it was repaired and then the Motor Bike was delivered to the petitioner. It may be mentioned that the petitioner wants replacement of the Motor Bike because of alleged manufacturing defect. The learned Counsel for the respondents submits that no replacement is permissible within the warranty period. The parties are bound by the terms and conditions of the contract. The O.Ps. are required to set right the defects only in the event there occurs any defect in the Motor Bike. The O.P. claimed that every time the Bike was produced at their workshop, it was attended to by their expert mechanics and on being satisfied about its performance on the road the petitioner had taken delivery of the Bike by signing the job card. He submits that since there is no expert evidence to show that the Motor Bike suffers from manufacturing defect, they are not bound to replace the Motor Bike. Learned Counsel for the appellant submits that since the Motor Bike had gone out of order off and on, it is to be concluded that it has manufacturing defect. In our opinion, no such conclusion can be arrived at without any expert evidence. Learned Counsel for the appellant has referred to a case reported in 1999 (1) CPR 152, to contend that when a vehicle which needs excessive repairs even during the warranty period of its purchase, it cannot be said to be a new and functional vehicle. It may be observed that the vehicle was never idle. But it was in road-worthy condition. It had run several thousand kilometres during the warranty period. The allegation of the petitioner was of course that it emits excessive smoke even after some vital parts of the machine were replaced. In the decision cited by the learned Counsel for the appellant we find that even the M.P. State Consumer Disputes Redressal Commission remanded the case back to the Forum with a direction to examine the tractor by the Expert Engineer to ascertain whether any manufacturing defects existed. Here in this case there is no expert evidence who has deposed that he had examined the Bike and noticed that it is beyond repair. In our view, in the absence of any expert evidence it is

not possible to conclude that the Bike had manufacturing defect. Learned Counsel for the appellant has also referred to a decision of the Supreme Court reported in 1999 (5) Supreme Page 16, that since the Motor Bike is in the custody of the O.P. the onus of proving that it had no manufacturing defect lies upon the O.Ps. It may be stated that the Motor Bike was in the custody of the petitioner so long during the warranty period. At the present moment it is lying in the workshop of the O.Ps. The definite case of the O.Ps. is that the petitioner did not take back the Motor Bike despite repeated requests. In view of the assertion made and in view of the fact that there is no denial to it we may safely conclude that the petitioner is in no mood to take back the Bike. The only grievance of the petitioner is that it was emitting excessive smoke and for this reason alone it is not possible to conclude that it had manufacturing defects. In our view, none of the judgments cited by the learned Counsel for the appellant exactly supports the case of the appellant. Therefore, having considered the facts and circumstances we are in agreement with the views of the Forum and hold that the judgment calls for no interference. The appeal fails and it is dismissed on contest. Appeal dismissed.