

(2015) 07 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

Case No : 1843 of 2011

LOVE KUMAR SHARMA

APPELLANT

Vs

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section \(2\)\(1\)\(g\)](#)

Citation : (2015) 07 NCDRC CK 0075

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Vishesh Issar, Ramesh Kumar Bamal

Judgement

1. On 24.03.2008, the Petitioner purchased a new "Palio Stile" passenger car from Respondent No.1, an authorized dealer of Fiat India Automobiles Ltd., the manufacturer of the vehicle. He paid a sum of 3,40,364/- towards the price of the car and an additional sum of 4,200/- for the extended warranty by 18 months.

2. According to the Petitioner, within five days of the purchase, the coolant in the car started leaking. On 03.07.2008, when he was driving the vehicle from Chandigarh to Jalandhar, it started "mis-firing" and then suddenly stopped. The vehicle was towed to a nearby Service Station but the defect could not be rectified. On 05.07.2008, the vehicle had to be towed to the workshop of

Respondent No.1 at Jalandhar, when he was informed that there was defect in the fuel pump, which had to be replaced. The vehicle was left there and a job card was prepared on 08.07.2008. Since the Petitioner did not hear from the said Respondent about the status of the car, on 19.07.2008, he addressed a letter to Respondent No.1, inter-alia stating that :- " On 05.07.2008, the car was parked in your workshop for finding the fault. I was told that the water had (sic) entered in the petrol fuel tank. Even after cleaning the fuel tank, the fault could not be rectified. Then during my meeting with G.M. on 11.07.2008, I was told that fault is due to fuel pump. I have been (sic) given to understand that the same has

been replaced.

Now the car is still under experiments of your work shop. I have to face great hardships in performing my duties. Now I fear that the engine of the car is being opened. Please also deliver me the copy of job card to get the status of the car. To stop further harassment to me it would be better to replace the faulty car otherwise I will be compelled to initiate the legal proceedings against the company."

3. Ultimately, after re-inspection of the vehicle, its Engine was replaced. Later on, the wiring in the car was also changed. Still dis-satisfied with the performance of the vehicle and feeling that the vehicle had some inherent defects and its market value had diminished because of replacement of Engine, the Petitioner requested Respondent No.1 to either replace the car or refund its full price i.e. 3,40,364/-.

4. Having failed to elicit any positive response from the said Respondent, the Petitioner filed Complaint in the District Consumer Redressal Forum, Jalandhar (for short, "the District Forum") seeking a direction to the Respondents, viz. the dealer and the manufacturer, to replace the car with a new one or in the alternative refund the full price of the car; reimburse the expenses incurred by him on accessories; insurance charges and amount charged for extended warranty, along with costs of litigation.

5. The Complaint was resisted by both the Respondents on diverse pleas. However, upon consideration of the documents on record, including the affidavit of the Engineer of Respondent No.1, asserting that the replacement of engine under warranty did not impair the utility and value of the vehicle as also Surveyor's report filed by the Petitioner, the District Forum came to the conclusion that the new vehicle, purchased by the Petitioner, had manufacturing defects, which surfaced within a few months of its purchase and the same could not be rectified despite extensive repairs, including replacement of Engine of new vehicle. Accordingly, vide order, dated 09.04.2009, the District Forum allowed the Complaint with a direction to the Respondents to pay to the Petitioner, jointly and severally, a compensation of 1,58,000/- for the inconvenience and harassment caused to him on account of manifest manufacturing defects in the vehicle. Additionally, Respondents were also directed to pay a sum of 20,000/-, being two third of the insurance premium and registration charges.

6. Being aggrieved, both the Respondents took the matter in separate Appeals before the State Consumer Disputes Redressal Commission, Punjab at Chandigarh (for short, "the State Commission"). The Petitioner, however, seemed to be satisfied with the compensation awarded, in lieu of the cost of the vehicle, as he did not prefer any Appeal against the District Forum's order.

7. Allowing the Appeal, vide order dated 17.02.2011, the State Commission has come to the conclusion that since during the warranty period a manufacturer is required to replace the defective parts with new parts, free of cost to the owner,

and the same having been done by the Respondents, the award of compensation by the District Forum was based on conjectures and surmises, more so when, the Petitioner had failed to examine any expert to prove the defects in the car and its engine had also been replaced. According to the State Commission, as the Petitioner had prayed for either replacement of car or refund of its full price, etc. the District Forum had passed "a strange order" in awarding the aforementioned amounts as compensation. Consequently, the State Commission dismissed the Complaint. Hence, the present Revision Petition by the Complainant.

8. The short question which arises for consideration is whether on facts at hand, the Petitioner is entitled to the compensation as was awarded to him by the District Forum?

9. As noted above, the State Commission has dismissed the Complaint filed by the Petitioner on three counts, viz. (i) during the period of warranty, a manufacturer is obliged to replace the defective parts without charging any amount from the owner of the vehicle, which, in the present case, was done by the dealer; (ii) the Petitioner had failed to adduce expert evidence to prove that the vehicle was suffering from manufacturing defects; and (iii) since the prayer made in the Complaint was for replacement of the car or refund of its full price, no alternative relief in the form of compensation could be awarded to the Complainant.

10. Having regard to the afore-noted factual scenario, we are of the view that the impugned decision of the State Commission is unsustainable. Leaving aside the alleged leakage of coolant within five days of purchase of the vehicle, admittedly, not only the fuel pump developed problem within less than four months of purchase of the vehicle, leaving the Petitioner stranded on road while driving from one city to another, even the heart of the vehicle, viz. the Engine had to be replaced within the same period of four months. Pertinently, in the reply filed on behalf of the manufacturer, a giant Italian car manufacturer, in this Revision Petition, while denying that there was any manufacturing defect in the vehicle, it is stated that replacement of engine does not imply that there was manufacturing defect in the vehicle and Respondent No.1, the dealer, had replaced the engine under warranty, free of cost to maintain good relations with his customer. It is further stated that when the vehicle was brought to the workshop of Respondent No.1, all the defects were rectified then and there as per the warranty conditions, without charging any amount from the Complainant. In our view, the plea that the engine of the vehicle was changed just to maintain good relations is without any substance. In the first place, it is beyond comprehension that a dealer would replace the Engine, a vital and expensive part of an automobile, free of cost, without the consent of the manufacturer and secondly no manufacturer would agree to replace the engine unless it was satisfied that the replacement was absolutely necessary for the smooth and troublefree running of the vehicle. We are convinced that necessity to change the aforesaid two vital parts of the vehicle is manifestation of the charge of the

Petitioner that the brand new vehicle did suffer from manufacturing defects and no further expert evidence was required to be adduced to prove the fact. That being so, there was clear "deficiency" of service as defined in

Section (2) (1) (g) of the Act, on the part of the Respondents. It is equally significant to note from the job card, opened on 24.08.2009, that the screeching sound from the Engine continued even after its replacement.

11. In *Indochem Electronic and Anr. Vs. Additional Collector of Customs, A.P.* - (2006) 3 SCC 721, while considering the provisions of Section 3 and 14 of the Act, the Hon'ble Supreme Court had observed that when the deficiency begins to manifest itself, it is the duty of the supplier to attend to such deficiencies immediately. If the supplier fails to attend to the deficiencies and malfunctioning of the system, soon after its installation, it would amount to deficiency of services. It was held that when the deficiencies in the system continue to persist during the warranty period, including the extended period, the supplier is liable to compensate the buyer for deficiency in service.

12. The contention of the Respondents that having rectified the defects in the vehicle without charging any amount from the Petitioner, they were not liable to pay compensation to the purchaser of the vehicle, is also without any merit. It would suffice to observe that the Petitioner had purchased a new vehicle with the fond hope and expectation that it would provide him hassle free service and not to be a constant source of inconvenience and nuisance of taking it to the workshop time and again for rectification of the defects, which, in the present case, surfaced within five days of its purchase and continued even after the stated repairs/ replacements. Therefore, attending to the defects in the car and even carrying out the repairs free of cost, in our view, is of no solace to an owner of the vehicle and does not absolve a dealer or a manufacturer from its liability to adequately compensate the purchaser for the inconvenience, harassment and mental and physical agony suffered by him on account of defects in the car.

13. Adverting to the afore-noted third ground, which weighed with the State Commission to set aside the compensation awarded by the District Forum, it is trite that the word "compensation" is of wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental and even emotional suffering, insult or injury or loss. The provisions of the Act enable a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only the value of goods or services but also to compensate a consumer for injustice suffered by him. {See: *Ghaziabad Development Authority Vs. Balbir Singh* - (2004) 5 SCC 65}. In view of the above, we are of the opinion that the District Forum was justified in awarding compensation to the Petitioner in exercise of its power under Section 3 of the Act, which provides that the provisions of the Act are in addition to and not in derogation of the provisions of any other law.

14. While entertaining the Revision Petition, notice to the Respondents was

confined to the question "whether, in the facts and circumstances of the case, some reasonable compensation should be awarded to the Petitioner". We are of the view that having regard to the facts of the case, the compensation of 1,58,000/- awarded by the District Forum was adequate and did not warrant interference by the State Commission.

15. Consequently, for the foregoing reasons, the Revision Petition is allowed; the impugned order is set aside and the Respondents are directed to pay to the Petitioner the aforementioned amount, jointly or severally, within six weeks of receipt of a copy of this order, failing which the said amount shall carry interest @ 9% p.a. from the date of this order till realization. No order as to costs.