
(2016) 10 NCDRC CK 0088

In the National Consumer Disputes Redressal Commission

Case No : 2053 of 2016

Mahender Kumar

APPELLANT

Vs

Hero Honda Motors Ltd. & Anr.

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#), [Section 2\(1\)\(g\)](#), [Section 2\(1\)\(f\)](#) - Jurisdiction of the National Commission - Definitions - Definitions

Citation : 2017 1 CPJ 333 : 2017 3 CPR 35

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : Mohammad Ikram

Final Decision : Revision Petition Dismissed

Judgement

1. This revision is directed against the order of the State Commission, Haryana dated 11.3.2015 in Appeal No. 967 of 2015 whereby the State Commission allowed the appeal preferred by the opposite party respondents, set aside the order of the District Forum and dismissed the complaint.

2. Briefly stated, facts relevant for the disposal of the revision petition are that petitioner-complainant purchased one Hero Honda motorcycle manufactured by OP No. 2 from dealer M/s. Jaya Automobiles (OP No. 1). According to the complainant, the motorcycle was defective. Consequently, its battery got discharged frequently. Complainant took the motorcycle to the workshop of the opposite party on several occasions but defect was not fully rectified. Even the battery was replaced twice by the opposite party-Being aggrieved the complainant raised the consumer dispute praying for replacement of motorcycle or in the alternative refund of consideration amount with interest.

3. The OP in its written statement denied the allegations of defect in the motorcycle and prayed for dismissal of complaint.

4. The District Forum on consideration of the pleadings of the parties and the

evidence allowed the complaint and directed the opposite party as under: "1. To replace the Motor Cycle with new one of the same make and the quality with fresh warranty or to refund the price of the Motor Cycle along with interest @ 12% w.e.f. 3.7.2013 i.e. from the date of filing this complaint till its final realization.

2. To pay Rs. 2200 as litigation expenses. The compliance of the order be made within 45 days from the date of receipt of certified copy of the order. Certified copies of this order be sent to the parties free of costs. File be consigned to record room after due compliance."

5. Being aggrieved of the order of the District Forum, the OP approached the State Commission in appeal. The State Commission vide impugned order came to the conclusion that there was no defect in the motorcycle and the draining of the battery was because of the reason that complainant had installed the indicator buzzer on the motorcycle as a result of which, the battery was getting discharged. For the aforesaid reason, the State Commission allowed the appeal, set aside the order of the District Forum and dismissed the complaint. Relevant observations of the State Commission are reproduced as under: "Indisputably, the grievance of the complainant is with regard to the failure of battery. A perusal of job cards (Exhibit R-1 to R-4) shows that battery of the motorcycle was changed twice. It also finds mention that outside indicator buzzer found fixed with wiring. The complainant was advised to remove the same and that was the cause of repeated failure of the battery. The complainant came to Jaya Automobiles to get the fuel average checked and it was found to be correct and complainant attested it that it was correctly checked. From the job cards, it is evident that there was no manufacturing defect in the motorcycle. The complainant did not lead any expert evidence that there was any manufacturing defect in the motorcycle."

6. Mr. Mohammad Ikram, Advocate for the petitioner, has argued that impugned order suffers from material irregularity inasmuch as the State Commission has failed to appreciate that since very beginning motorcycle was giving trouble to the complainant and he had to take motorcycle to the workshop of the opposite party on several occasions and within a short span, the battery had to be replaced twice which is clear indication that there was some defect in the motorcycle which could not be rectified.

7. We do not find merit in the above contention. On perusal of the copies of the job cards filed by the complainant, we find that in one of the job card, it is recorded that complainant had got installed the outside mediator buzzer on the motorcycle and he was advised to remove the same. The State Commission in view of the aforesaid endorsement in the job card has taken a view that drainage of battery was because of faulty wiring of the mediator buzzer. Otherwise also, there is no expert evidence on the record to indicate that motorcycle was having some manufacturing defect as a result of which the motorcycle battery was getting drained out. Although the complainant in his affidavit has said that he got

the motorcycle inspected by some expert, he has neither given the name of the said expert nor he has filed the expert report to establish that motorcycle was having manufacturing defect nor the affidavit of said expert has been filed. In absence of any cogent evidence to establish manufacturing defect we do not find any fault with the finding of the State Commission that complainant has failed to prove any manufacturing defect in the motorcycle. In view of the discussion above, petitioner has failed to show any material irregularity or jurisdictional error in the impugned order which may call for interference in exercise of revisional jurisdiction. Revision petition is, therefore, dismissed. Revision Petition dismissed.