
(2009) 01 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

Managing Director Sona Auto Agency (P) Ltd.

APPELLANT

Vs

Sisirendra Nath Banerjee Prova Lodge, Rabindra Nagar ,
Secretary Kinetic Motor Company Ltd.

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Citation : 2009 0 NCDRC 38

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Advocate : Dushyant Svarup , Adarsh Ganesh

Judgement

1. THIS revision petition impugns the order dated 31.08.2006 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata (hereafter, the State Commission) in FA No 455/A/04. By this order, the State Commission set aside the order of 27.09.2004 of the District Consumer Disputes Redressal Forum, Siliguri (hereafter, the District Forum) and directed the petitioner (original opposite party no. 1) and respondent no. 2 (original opposite party no. 2) to pay, jointly and severally, to respondent no. 1 (the original complainant, hereafter, the complainant) the purchase price of the scooter bought by the complainant from the petitioner, along with interest @ 9 per cent per annum from the date of payment of the price and costs of Rs. 4,000/-. The petitioner (hereafter, the dealer) is the authorised local dealer and respondent no. 2 the manufacturer of the two-wheeler in question.

2. THE complainant purchased a Kinetic scooter from the dealer in December 2002. It is an undisputed position that soon thereafter he approached the dealer for rectification of some problems, including alleged high consumption of fuel, which he experienced with the vehicle. It is also undisputed that from time to time, the dealer attended and attempted to rectify these problems. But the recurrence of the problems continued, as is clear from the fact that after about four months from the purchase, the complainant wrote to respondent no. 2 (hereafter the manufacturer) alleging manufacturing defects. As noticed by both the lower Fora, considerable correspondence between the complainant, on the

one hand and the dealer as well as the manufacturer, on the other followed. Finally, in June 2003, a service engineer of the manufacturer inspected the vehicle, did some adjustments and also had some parts replaced. THE complainant admits that after these repairs, etc., the scooter worked alright for some time but alleges that the problems reappeared soon thereafter. He then returned the scooter to the petitioner and filed the complaint in question in October 2003. THE District Forum dismissed the complaint. THE complainant went up in appeal to the State Commission, with the result noted already. In setting aside the order of the District Forum, the State Commission did not find fault with the detailed appreciation of facts by the District Forum, including that the dealer and the manufacturer did, from time to time, attend to the complaints about malfunctioning of the vehicle. However, the State Commission noted that the dealer first averred before the District Forum that when the complainant finally left the scooter with the dealer on account of its continued malfunctioning (after about ten months of its purchase), it had run for 300 km and observed that the dealer could not improve the claim, by way of a later affidavit before the District Forum, that the scooter had by then actually run for 2950 km. Thus, the State Commission held that the District Forum had erred in relying on the latter claim. Secondly, the scooter was not tested by any expert body at any stage, with reference to the complainants allegation of manufacturing defect. The District Forum held it against the complainant that he was unable to cite any expert evidence in support of this allegation. The State Commission recorded its disapproval of this approach of the District Forum and came to the finding, namely, that the scooter did suffer from a manufacturing defect as alleged by the complainant, which was diametrically opposite to that of the District Forum. In short, based on the same material on record, the State Commission came to the finding of manufacturing defect in the scooter purchased by the complainant and made the award noted above.

According to both the Fora below, there is no deficiency in service in this case because the dealer and the manufacturer appeared to have attended to the alleged defects in the vehicle from time to time. Though no documents like job cards of the works of repairs, replacement of parts, etc., were produced before the District Forum, consideration of the copies of correspondence brought on record and the affidavits of the parties led to the above-mentioned finding. There is no reason for us to take a different view on the issue of deficiency in service. The case, therefore, is that of defect(s) in the vehicle according to the complainant, manufacturing defect(s). The provisions of the Consumer Protection Act, 1986 (hereafter, the Act) require, vide section 13 (1) (c), the District Forum to refer the goods allegedly suffering from a defect to an appropriate laboratory for test and determination if the goods suffer from the defect alleged or any other defect this reference for technical analysis/testing of the goods and determination of defect, if any therein, is mandatory where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods. Whether the two-wheeler in question suffered from any

manufacturing defect was surely a matter which ought to have been referred to an appropriate automobile testing laboratory for technical determination. However, the District Forum not only failed to do so but also held it against the complainant that he had not produced any expert evidence in support of his allegation. In doing so, the District Forum was clearly in error. The State Commission was in excellent position to have this error rectified; however, it also did not choose to do so. At this late stage in the adjudication of the dispute, after nearly six years of the purchase of the vehicle (and probably its lying unused with the dealer at its workshop/premises), it is not feasible to remit the matter back for testing of the vehicle for an appropriate technical determination.

3. IN our view, however, a consumer in a comparatively smaller town like Siliguri is unlikely to make an allegation of manufacturing defect unless he had good grounds to so suspect, particularly when the problems remained unresolved even after several rounds of servicing, etc., by both the dealer and the manufacturer (the latter, at least once, as admitted). Moreover, as noted by the State Commission, the two-wheeler had done just about 300 km of running after nearly ten months of its purchase and the vehicle was still within the warranty period of one year. If repeated servicing and repairs turned out to be unsuccessful in resolving the problems encountered by the consumer complainant, it would point to some serious defect, if not a manufacturing defect per se in the strict sense of the term. We find a parallel between this case and the case of R. Raja Rao versus Mysore Auto Agencies and Anr. [2006 CTJ 558 (CP) (NCDRC)], which was decided by a Bench headed by the then President of this Commission in favour of the complainant in appeal in the latter case also the vehicle was returned to the dealer after a few months of its purchase because repairs, etc. carried out to the vehicle did not resolve the problems faced by the purchaser (though in that case, the dealer had the vehicle repaired extensively after it was left with the former and also ran it for quite sometime). We also notice that one of the main grounds of the dealer in this revision petition is that it was the manufacturer (respondent no.2 here) who should have been held responsible by the State Commission. The dealer has, however, not produced before any Forum a copy of its agreement with the manufacturer to show the extent of mutual liability in such a situation or whether it was a principal-to-principal agreement, as is the situation in several cases of automobile dealerships. Nor has the manufacturer clarified the position at any stage. We are, therefore, not inclined to interfere with the findings and order of the State Commission in this case. As a result, we dismiss this revision petition and order that the petitioner-dealer and the manufacturer shall, jointly and severally, comply with the order of the State Commission within four weeks from the date of this order and also pay Rs. 2,000/- as costs of these proceedings to the complainant.