

(2013) 05 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Mercedes-Benz India Pvt. Ltd.

APPELLANT

Vs

InterCard (India) Ltd

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 486 : 2013 3 CPJ 48

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Advocate : M.S.PANDIT , SANJAY K.PATHAK , DHRUV MADAN

Judgement

1. APPELLANTS which were the Opposite Parties before the State Commission have filed this Appeal against the order and judgment dated 02.02.09 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, "the State Commission ") in Complaint Case No. C-39/04 whereby the State Commission allowing the complaint has directed the Appellant No.1 (hereinafter referred to as the "Manufacturer ") to refund the sum of Rs.22,58,251/- towards the cost of car on its return by the Complainant apart from compensation of Rs.5,00,000/- which was to be equally shared by the Appellant No.2 (hereinafter referred to as the Dealer). Appellants were also directed to pay Rs.20,000/- towards costs of litigation. FACTS:- Complainant/Respondent wanted to purchase a Mercedes Benz Car Model C-180 manufactured by the Appellant No.1. They approached Appellant No.2 who is the dealer of the Mercedes Benz Cars in February 2003. Appellant No.2 asked the Complainant/Respondent to wait for three months. On confirmation by the Dealer that the latest model C180K had been launched in the market by the Manufacturer, Respondent purchased the Car on 03.06.03 for a consideration of Rs.22,58,251/-. Respondent found that the model C-180K was neither a regular edition nor has ever been launched. It was a limited edition and there was no press release or advertisement before launching the said model. After 3-4 days of the purchase of the Car, Respondent saw an advertisement of the latest model C - 200K which was being official launched by the Manufacturer. Complainant, being aggrieved, filed the complaint before the State Commission.

2. ON being served, Manufacturer put in appearance and filed its written

statement resisting the complaint on the grounds; that the Dealer was not its agent; that the relationship of the Appellant No.1 with the Appellant No.2 was on principle to principle basis and not on principle to agent basis; that there was no privity of contract between the Respondent and the Manufacturer in regard to sale of vehicle or alleged mis-representation by the Dealer; that the Respondent was not a "consumer " as the vehicle was purchased for commercial purpose; that the Model C-180K was a limited edition version and was the most contemporary vehicle in the country at the time of its introduction; that the Respondent was given "trade-in " offer to upgrade his car to C-200 K, the latest model introduced by the Manufacturer; Dealer contested the complaint on the grounds; that the Respondent was not a "consumer "; that at the relevant time the C-180 K was the latest model available in the C-Class range in the Indian market; that many times the dealer was also not aware of any new model to be launched by the manufacturer and sometimes the new models are introduced within very short period. Appellant No.2 admitted that its relationship with the Appellant No.1 - manufacturer was on principle to principle basis and not on principle to agent basis.

State Commission, after considering the facts, pleadings and the evidence adduced by the parties, held that the Respondent was a "consumer " and car was sold to them by making misrepresentation of a limited edition. Accordingly, State Commission allowed the Complaint and directed the Manufacturer to refund the sum of Rs.22,58,251/- towards the cost of car on its return by the Complainant apart from compensation of Rs.2,00,000/- which was to be equally shared by the Dealer. Appellants were also directed to pay Rs.20,000/- towards costs of litigation. State Commission in its order observed as under:- " On merits, it is apparent and crystal clear that the complainant had been sold by way of mis-representation a limited edition, which was never launched in the market whereas the complainant had gone to purchase a regular edition C-180 and thereby he has suffered financial loss and since there is no re-sale value of limited edition, the complainant has suffered immensely financially as well as could not even use the car the value of which happened to be Rs.22.00 lakh or so. The OP has failed to produce any documents to show that it had ever come with 180K model in the market. In spite of having written so many letters to the OP as to the information whether the vehicle supplied to the complainant 180-K was the latest version or not the OP failed to come out with the truth.

3. IT is a known trade practice that whenever a new model is going to be launched in the market advertisements in the newspapers or in the electronic media are given. In case of 200-K, which was subsequently launched by the OP, it was widely published in the economic times. Photocopies of such publications in the newspapers have also been produced. In its letter dated 5-8-2003 it was categorically admitted that 180-K was a limited edition. Reproduction of the said letter is necessary and is as under:- "At the outset, we thank you for your letter dated July 30, 2003 regarding the purchase of a C-190 Kompressor vehicle. We wish to inform you that the C-180 Kompressor was indeed a limited edition and

therefore had a short run in the country. Please note that at the time of your purchase, the C-180 Kompressor was the most contemporary vehicle in the country from the Mercedes Benz C-class stable ". It is immaterial whether the complainant has run the car for 50-60,000 kms as what is material for us is that such gross misrepresentation was made by the OP that the customer suffered huge financial loss, mental agony, harassment and lost mental peace. This is the grossest kind of deficiency in service and an unfair trade practice. "

4. APPELLANTS , being aggrieved, has filed the present appeal. We have heard the Ld. Counsel for the parties at length. Ld. Counsel appearing for the Manufacturer contends that the relationship between the Manufacturer and the Dealer was on Principal to Principal basis. That the cars manufactured by it were sold to the authorized dealers on principle to principle basis. That the dealer was not an agent or distributor of the manufacturer. That the Manufacturer cannot be held liable for the mis-representation, if any, made by the Dealer. Ld. Counsel appearing for the Dealer contends that there was no mis-representation on their part. That at the time of purchase of vehicle by the Respondent, the latest model of the vehicle available in the market was C 180 K and it was the most contemporary vehicle at the time of its introduction in the market of the country. That the model C-180 K was not a limited edition version. That the State Commission erred in awarding compensation of Rs.5,00,000/- towards mental agony and harassment as no such claim was made by the Respondent in the complaint. Respondent made the claim for compensation of Rs.2,00,000/- for alleged harassment and mental agony only at evidence stage and by awarding a sum of Rs.5,00,000/- on that count, State Commission has committed a grave error. That the Respondent was not a consumer as the vehicle was purchased for commercial purpose. State Commission has ignored the vital fact that the vehicle was used by the Respondent for 50,000 to 60,000 kms. As against this, Ld. Counsel appearing for the Respondent supports the order passed by the State Commission. We find substance in the submission made by the Ld. Counsel for the Manufacturer that the relationship between the manufacturer and the dealer was on principle to principle basis. Averment made by the manufacturer that its relationship with the Appellant No.2- dealer was on principle to principle basis was admitted by the Appellant No.2 in its written statement. Appellant No.2 was the authorized dealer and not the agent or distributor of the manufacturer. The Manufacturer sold the vehicles and spares to the Authorized Dealer on principle to principle basis. The Manufacturer cannot be held liable for the mis-representation, if any, made by the Authorized Dealer. The only grievance of the Respondent was that had the Dealer disclosed about the latest C 200 K model, they would have purchased the said model instead of C180 K model. Sometimes, even the dealers are not aware about the launching of the latest model by the manufacturer. Even otherwise, there is no evidence on record to show that there was any mis-representation on the part of the authorized dealer as a result of which the Respondent suffered huge financial losses. Dealer had offered to sell

model C 180K which the Respondent purchased. The Respondent had used the vehicle for 50,000-60,000 kms. There was no manufacturing or any other defect in the vehicle purchased by the Respondent. This is evident from the letter dated 30.07.03 written by the Respondent to the Appellant No.1 in which Respondent had stated that they had business relations with the TNT Motors - Appellant No.2 for quite long and that they had recommended to many people to purchase the model sold to them. State Commission was not justified in directing the manufacturer to refund the costs of the car on return of the same by the Respondent and to pay the compensation of Rs.5,00,000/- to be equally shared by the dealer. For the reasons stated above, the appeal is accepted and the impugned order is set aside. No order as to costs.

5. A sum of Rs.1,00,000/- had been deposited by the Appellant No.1 with this Commission in compliance of the order dated 30.03.2009. We direct the Registry to refund the amount of Rs.1,00,000/- to the Appellant No.1 along with accrued interest, if any. Registry is also directed to refund the sum of Rs.35,000/- deposited by the Appellant No.1 as statutory deposit along with accrued interest.