

(2017) 09 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

Case No : 217 of 2009

MERCEDES-BENZ INDIA PVT. LTD. (FORMERLY KNOWN AS M/
S. DAIMLERCHRYSLER INDIA PVT. LTD.), & ANR. APPELLANT

Vs

NATWARLAL M BADIANI, & ORS. RESPONDENT

Date of Decision : 11-09-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19, Section 13 - Appeals - Procedure on admission of complaint

Citation : 2017 4 CPR 107

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : M.S. Pandit, Harish Sandhu, Aakarshan Sahay, Saurabh Kumar, Sondarai Rajan, Abhijeet Sinha

Judgement

1. This order shall decide above said two appeals filed by Mercedes - Benz India Pvt. Ltd. (FA No. 217 of 2009) and Tata Motors Limited (FA No. 251 of 2009) under Section 19 of the Consumer Protection Act, 1986.

2. These first appeals have been filed under Section 19 of the Consumer Protection Act, 1986 against the order dated 20.4.2009, passed in Complaint No. 146 of 1997 by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad whereby the State Commission allowed the complaint and directed the OPs 1, 2 and 4 to pay a sum of Rs.5,00,000/- alongwith interest @ 9% per annum to the complainant. A sum of Rs.25,000/- was also awarded towards mental agony. The complaint was dismissed against opponent No. 3.

3. The brief facts are that the complainant, Mr. Natvarlal M. Badiani, a practicing Advocate in Jamnagar, purchased a Mercedes Benz car on 14.8.1996 from Tata Engineering and Locomotive Ltd./OP 1 through M/s Cargo Motors Limited, OP 3. He paid Rs.24,58,389/- including insurance, RTO tax and other miscellaneous expenses. From the very first day of purchase, he encountered several problems in the vehicle in terms of its quality and performance. Immediately, the same was informed to OP 1 through FAX dated 21.8.1996. The OP 1 deputed one Mr.

Rakshit to complainant's place at Jamnagar for inspection of the vehicle, but he failed to remove the defects. The OP 1 wrote a letter to the complainant on 24.8.1996 stating that if he was not satisfied with the vehicle, he should bring the vehicle to Ahmedabad for thorough check up. Pursuant to that, the complainant himself travelled the distance of 320 kms. from Jamnagar to Ahmedabad in September 1996 and took his car to workshop of OP 3. The complainant pointed out various problems and shortcomings in the vehicle, namely, defective suspension of vehicle, non-functioning of rear suspension of vehicle, the vibrations at speed exceeding 100 kms., difficulty while crossing the speed breakers, lot of noise while in motion, extremely hard doors and dust used to come into the vehicle while in motion. The OP 3, after removal of defects, sent back the car to Jamnagar on 3.10.1996, but the vehicle was not upto the satisfaction of the complainant. In the meantime, the car battery was totally discharged, therefore, the complainant could not drive the car at all. The same was informed to OP 3 vide letters dated 4.1.1997 and 9.1.1997. As new battery having same specifications, was not available at Rajkot and Jamnagar, OP 3 expressed its inability to replace the battery and advised to replace the battery with some other battery of different manufacturer. The OP 1 assured that battery of different specification would not affect the performance of vehicle. The defects went on continued. Again, the complainant informed the OP 3 on 24.1.1997 about manufacturing defects in the vehicle and asked to rectify. The condition of vehicle further deteriorated. There was leakage of oil from the engine and heavy knocking noise. The same was informed to OP 1 by letter dated 21.3.1997, upon which, Mr. Rav, Engineer from Mumbai, visited the place of OP and inspected the car and he referred the defects to Mr. A. V. Ekhota for further action. He found that knocking in the engine was due to non-functioning of piston and also there are non-functioning of alternator, which caused discharge of the battery. Thus, it was also the defect in the electric system of the car. On 17.2.1997, the alternator was replaced and injectors were serviced. Even thereafter, the problems in the vehicle were continued. The complainant contacted the OPs on telephone, also wrote a letter on 6.6.1997 to take back the car and refund the entire amount. Therefore, aggrieved by the harassment and lapses in the service of OP 1, the complainant filed a complaint before the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (in short, "the State Commission") against the OP for unfair trade practice and prayed for compensation of Rs.15,12,427/- alongwith interest @ 18% per annum from the date of purchase till the date of payment and Rs. 4,00,000/- as damages towards mental agony.

4. The OPs resisted the complaint by filing the written version. OP 2 in its reply submitted that the Commission has no jurisdiction to entertain the complaint and the disputed car had no manufacturing defect. The complaint was filed on frivolous grounds. Also, submitted that as per Section 13 of the Consumer Protection Act, 1986, the complainant ought to have got the car examined in competent laboratory since 1996. The OP further contended that due to road conditions in India, the battery and tyres were purchased locally and as per oral

instructions of the complainant, the height of the car had been increased from the road-level so that the car could run smoothly on uneven roads and warranty of one year was also given. On 24.8.1996, Mr. Rakshit, the service Engineer examined the car and according to him the roads nearby Jamnagar are not straight and uneven; also; the air pressure was less in the steel radial tyres; hence, the noise from the tyres while running the car on uneven roads. The other service engineers, namely, Shri R. P. Kumar and Mr. M. M. Chauhan visited Jamnagar and Ahmedabad. They have changed rear springs without any charge so that the rear side of car may remain on a little height from the road level. The springs becomes hard once the height of the car got increased from the road. Thus, it was not to be considered as defect. The battery and alternator were replaced immediately. The knocking sound was because of the carbon in the injectors. The injectors filled with carbon were cleaned, which could be on account of kerosene in the injectors. During test ride, there were no signs of vibrations or any dust entering in the car. The doors were not hard also. The complainant had used the vehicle in order to claim the Income tax depreciation for commercial purpose and as there was no manufacturing defect, thus, the complaint was not maintainable. The depreciated value of the car as on 31.3.2006 was Rs.2,63,364.51 p. and thus the complainant is entitled only to the maximum Rs. 2,63,364/- on 27.3.2006. The OP 2 and the OP 4 also had filed their reply and denied about manufacturing defect. The cars manufactured by OP 4 are approved by ARAI, Pune and also exported to the foreign countries. At the time of delivery, the complainant was satisfied, he used the car continuously and extensively. The car had run about 1,12,225 kms. till 27.3.2006. Thus, the complainant has not suffered any loss on account of non-use of the car. The car also had met with an accident. The agreement between the opponent Nos. 3 and 4 was on principal to principal basis, therefore, OP 4 is not liable for any acts or inactions of OP 3. As per warranty conditions, the parts were liable to be replaced without any charge. However, the labour charges, oil change etc. are to be borne by the complainant.

5. The State Commission after considering the pleadings and evidence, partly allowed the complaint and directed the OPs 1, 2 and 4 to pay Rs. 5 lakh alongwith 9% interest to the complainant, also awarded costs of Rs. 25,000/-. Being aggrieved by the order of State Commission, the OPs 1 and 2 have filed two separate instant appeals.

6. We have heard learned counsel for the parties. Learned counsel for the petitioners (OPs) and the complainants argued at length. Both the counsel made submissions as narrated in their pleadings and evidence.

7. We have given our thoughtful consideration to the arguments advanced by the parties. It is an admitted fact that the complainant purchased the vehicle in 1996 and he was using the car for more than 10 years at the time of proceedings before the State Commission. The vehicle had already clocked more than 1,12,225/- kms. as on 23.6.2006 and it is still in use. At the request of

complainant to the OP 3/dealer, the car was raised on the rear side in order to ensure proper ground clearance, considering the poor road condition in Jamnagar area. Therefore, in our view, the replacement of springs does not require change of the body or cutting of the part under the body. The OP replaced the rear springs free of costs as a gesture of goodwill and the same cannot be considered as a defect in the vehicle.

8. It is also pertinent to note that the complainant himself in the complaint stated that he had availed depreciation of 20% during 1996 to 1998 under IT Act. Furthermore, the complainant has not placed any evidence from the experts like ARAI, Pune to prove that there was a manufacturing defect. In our view, due to regular and extensive usage of the vehicle, it was obvious cause of wear and tear in the components of the vehicle.

9. It should be borne in mind that the obligation of the manufacturer under the terms of warranty is limited to repair of the vehicle. Our view dovetails from the case of Maruti Udyog Ltd. vs. Susheel Kumar Gabgotra & Anr. I (2006) CPJ 3 (SC), wherein the Apex Court inter alia held that obligation of manufacturer under warranty only to repair or replace any part found to be defective - Necessary repair and replacement of components carried out free of charge during warranty period and therefore, High court (J & K High Court) was not justified in directing replacement of vehicle.

10. Regarding the question that the rear portion of the car was raised from the ground level, it was the say of the complainant that the said spring was fitted in the car by cutting the body of the car and the rear suspension was fitted behind wheel. OP had not raised any dispute with regard to this. According to OP, the complainant had orally informed for raising the rear height of the car from road level before taking delivery of the car, but the OP had not produced any documentary evidence in support of their say. However, the complainant has refuted to having given such instructions to the opponents. It is pertinent to note that ordinarily, the manufacturer of the said car would take written instructions for effecting changes in such expensive car. No one will do any major changes upon oral instructions. The State Commission held that the OP had raised the height of the car from road level, thus, it was the manufacturing defect. In our view, raising of the height of the car, was not a manufacturing defect, because the OP had only put the springs to raise the height. The question is whether the complainant has made an oral request or not? It is transpired from the affidavit and inspection report of OP/Engineers that the roads in Jamnagar were uneven and dusty, which needs more space from the ground level. Even if we consider that the complainant had not given any instruction either oral or written, in our view, the OP acted in good interest of the complainant. It is transpired from the evidence that the complainant was using car continuously for more than 15 years, which itself means car was in running condition. Even the present depreciated value will becomes nil.

11. No doubt, it is an admitted fact that OP had increased the height of rear

portion of the car. In this regard, the OP has not produced any cogent evidence that the complainant had consented for raising of the rear portion. Thus, it was done without consent of the complainant, which amounts to deficiency in service for which the OP should be liable, but we are not convinced or see any justification to the award of compensation to the tune of Rs. 5 lakhs by the State Commission. The Hon''ble Supreme Court in Ghaziabad Development Authority vs. Balbir Singh I I (2004) CPJ 12 (SC) observed that there has to be a relationship between the amount awarded and the defect/harassment. In our view, the award passed by the State Commission is on higher side without any proper explanation. Therefore, we modify the order of the State Commission and direct the OP 1/the dealer to pay Rs.2 lakh to the complainant from the date of filing of the complaint alongwith interest @ 9% per annum till its realization.

12. With these terms, both the appeals are hereby disposed of.