
(2016) 08 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Case No : 3403 of 2011

M/S. HONDA SIEL CARS INDIA LTD.

APPELLANT

Vs

MAJOR GENERAL M. J. S. VIRK

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

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

Citation : 2016 3 CPR 369

Hon'ble Judges : B.C. Gupta

Advocate : Jagdev Singh, K.S. Negi, Neeraj Sobti, Dushyant Tiwari

Judgement

1. These two revision petitions have been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 25.07.2011, passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh (hereinafter referred to as "the State Commission") in Appeal No. 429/2010, Major General M. J. S. Virk vs. M/s. Honda Siel Cars India Ltd. & Anr., vide which, while allowing the said appeal, the order dated 06.10.2010, passed by the District Consumer Disputes Redressal Forum, U.T. Chandigarh, in Consumer Complaint No. 436/2008, filed by the present respondent no. 1, dismissing the said complaint, was set aside.

2. The facts of the case are that the complainant/respondent no. 1, Major General M. J. S. Virk purchased a Honda Siel Car from the opposite party (OP-2), M/s. Lally Motors Ltd. on 24.09.2006 against defence quota for Rs. 5,91,000/-. As per version of the complainant, given in the consumer complaint, he found the following ma-nufacturing/inherent defects in the said vehicle:- "(i) Excessive noise inside the car while driving with all windows closed as well as tyre noise.

(ii) Poor pick-up in hilly roads as well as failure to climb the hilly roads.

(iii) LHS frt. Seat garnish adjustment entangles with trousers and sarees as well as bumpy ride."

3. The main grouse of the complainant is that the said car was having problem in climbing the hilly roads, even when only two passengers were sitting in it. The complainant brought the defects to the notice of OP-2, dealer, who tried to remove the said defects, but could not succeed. The complainant brought the matter to the notice of OP-1, ma-nufacturer Honda Siel Motors also through e-mail, but they also did not take any action to rectify the same. Alleging deficiency on the part of the MA-NUfacturer as well as the dealer, the complainant filed the consumer complaint in question, seeking directions to the OPs to get the car replaced with a new vehicle and also provide compensation to him on various counts. The complaint was resisted by the OPs by filing written reply before the District Forum, in which they stated that the complainant had concealed the fact that the vehicle had met with an accident and repairs were got carried out from the respondents on payment basis. The complainant had been filed as a cover up for rash and negligent manner in which the car was being driven. The car was checked by the technical staff of the OP-2 against whom, no grievance had ever been made by the complainant. The initial complaint was made in the year 2006, but despite best efforts to redress his grievance, he was not satisfied. It was also stated in the reply that driving the vehicle in steep hilly areas depended upon the skill of the drivers and the allegation with regard to the difficulty in climbing the hilly areas was misconceived. The OP-1 stated that there was no MA-NUfacturing defect in the said vehicle.

4. The District Forum, after considering the averments made by the parties, dismissed the consumer complaint, vide their order dated 06.10.2010. It was observed by the District Forum that the complainant had not been able to prove from the job cards, placed on record, that there was any inherent MA-NUfacturing defect in the said vehicle. The complainant had relied only on the affidavit of Ravinder Singh Sohal to prove that it was a defective vehicle. Being aggrieved against the order of the District Forum, the complainant challenged the same by way of an appeal before the State Commission. The State Commission, vide impugned order, allowed the appeal, set aside the order of the District Forum and directed the OPs to replace the car with a brand new car. A sum of Rs. 20,000/- was allowed as litigation cost also and it was held that payment of compensation of Rs. 2 lakhs for deficiency in service was not justified, since the complainant had been using the vehicle in question.

5. Being aggrieved against the order of the State Commission, the MA-NUfacturer as well as the dealer are before this Commission by way of the present revision petition.

6. During arguments, it was contended by the learned counsel for the petitioner, Honda Siel Cars India Ltd. that there was no MA-NUfacturing defect in the said vehicle. The case of the complainant had been built on the basis of an affidavit filed by Ravinder Singh Sohal, who is stated to be a qualified Electrical Engineer. Evidently, Sh. Sohal did not have qualification in the field of Automobile

Engineering; hence, no reliance could be placed on the opinion given by him. Moreover, the complaint was also being pursued by the said Ravinder Singh Sohal on behalf of the complainant as attorney. On record, was an affidavit filed by one J. M. Bhogal, who claims to be a qualified Civil Engineer and had gone to Barog in Himachal Pradesh alongwith Ravinder Singh Sohal. It was stated in the affidavit of J. M. Bhogal that the car comfortably climbed upto the end. Further, there was an affidavit filed by one Rakesh Kumar Garg, who worked as workshop controller with the OP-2 and had 19 years of experience in the automobile service field. The said Mr. Garg had stated in his affidavit that he had inspected his vehicle and went to the place where the complainant had alleged that the vehicle failed to climb. The car was scanned through computerized scanner called Honda Diagnostic System (HDS) and no abnormality was noticed. They had duly informed the complainant that there was no defect in the vehicle and the said fact was intimated to the complainant as well as his friend by driving the vehicle upto his house. On record, is a certificate given by the Automotive Research Association of India (ARAI), which is a research institution of the Automotive Industry with the Ministry of Heavy Industries & Public Enterprises, Govt. of India. It was stated in the said certificate that based on the testing carried out on the base model, submitted by the MA-NUfacturer of the vehicle, it was certified that the base model and its variants complied with the Central Motor Vehicle Rules, 1989. The learned counsel has also drawn attention to the affidavit filed by Amit Sinha-their Manager (Legal) in response to the affidavit and evidence of the complainant, in which he stated that there was no deficiency or MA-NUfacturing defect in the vehicle. It is also stated therein that there was a material suppression of facts on the part of the complainant, as he had withheld the details of the accident in which the said car was involved and the impact on the said car. The learned counsel stated that the State Commission had taken an erroneous view that the vehicle had difficulty in climbing the hilly roads, since the vehicle was being used by the complainant continuously, which implied that there was no defect in the said vehicle. The learned counsel for the petitioner/dealer stated that their job was to provide service to the vehicle and they had carried out their duties to the best of their ability. The learned counsel for the petitioner has also drawn attention to the orders passed by this Commission in the following cases in support of his arguments:- 1. Maruti Udyog Limited vs. Hasmukh Lakshmidhanda & Anr., Revision Petition No. 827/2007;

2. R. Baskar vs. D. N. Udani & Ors., IV (2006) CPJ257(NC);

3. Vijay Singh Chauhan vs. Maruti Udyog Ltd. & Anr., IV (2008) CPJ167(NC);

4. Rakesh Gautam vs. Sanghi Brothers Ltd.,

5. LML Limited vs. Arun Kumar & Ors., IV(2008) CPJ 228 (NC);

6. Tata Engineering & Locomotive Co. vs. T. Nagaraju, decided on 27.04.2000

7. The learned counsel for the complainant, however, stated that the testimony of Rakesh Kumar and Rakesh Kumar Garg could not be relied upon, as they were

working as employees with the OPs only. The learned counsel alleged that the personnel of the OPs had driven some other car and carried testing on that car instead of the vehicle in question. As stated in the order of the State Commission, the OPs had deputed one Gurpreet Singh for test drive of the vehicle. The said Gurpreet Singh was unable to drive the car uphill. The OPs had, therefore, deliberately withheld the filing of the affidavit of Gurpreet Singh. The learned counsel stated that in the job card recorded on 30.08.2006 in respect of the said vehicle, it had been mentioned that the car had poor pick-up in hilly stations.

8. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

9. The State Commission, in their impugned order, have rightly observed that the primary question to be decided in this case is as to whether the car in question cannot climb on the uphill road and if so, whether it amounts to a MANUFACTURING defect.

10. The material produced on record broadly indicates that evidence affidavits have been filed by persons known to the complainant, or the employees working with the opposite parties. It appears that no serious attempt has been made to get the vehicle examined by an independent automobile expert or engineer. Further, an affidavit filed by one Parminder Singh, Asstt. Gen. Manager of the OP, dealer says that the car was taken for a test drive at Barog Heights to satisfy the complainant that no such defect existed in the car and for that purpose, the said Parminder Singh had deputed one Gurpreet Singh for test driving of the vehicle on 16.06.2007. Parminder Singh stated that it was incorrect to say that the car failed to climb upto Barog. On the other hand, the case of the complainant is that Gurpreet Singh was unable to drive the vehicle uphill and that is why the OPs had not filed the affidavit of the said Gurpreet Singh. The State Commission have also observed that since the OPs did not controvert the contention of the complainant in this regard, the said contention was correct, otherwise they would have filed the affidavit of said Gurpreet Singh. The complainants have further stated that the affidavits of Rakesh Kumar, Area Manager and that of Rakesh Kumar Garg could not be relied upon, because these two persons are employees of the OPs.

11. Keeping in view the overall facts and circumstances of the case, it is considered appropriate that the State Commission should appoint an independent Auto expert or an institution, which should get hold of the said vehicle and examine the same after subjecting it to test drive on the hilly roads and then state categorically whether there was any defect in the vehicle or not. In case as an outcome of the said expert opinion, it is found that the vehicle is defective, the State Commission may, after hearing the parties again, decide upon the quantum of compensation to be paid to the complainant, or may pass any appropriate order keeping in view the report of that expert. These revision petitions are, therefore, allowed with these observations and the impugned order

passed by the State Commission is set aside. The matter is remitted to the State Commission for proceeding further in accordance with the observations made above. The parties have been directed to enter appearance before the State Commission on 26.09.2016.