
(2016) 07 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Case No : 787 of 2016

M/S. JAYCEE AUTOMOBILES PVT. LTD.

APPELLANT

Vs

RAJ KUMAR AHNIHOTRI & ANR.

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Consumer Protection Act, 1986, Section 19 - Appeals

Citation : 2016 3 CPR 474

Hon'ble Judges : M. Shreesha

Advocate : Nidhi Mehrotra, Abhinav Mukhil

Final Decision : Appeal Dismissed

Judgement

1. Aggrieved by the order passed in Consumer Complaint No.71/2014 on the file of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (in short, "the State Commission"), The first Opposite Party preferred this Appeal under Section 19 of the Consumer Protection Act, 1986 (in short, "the Act"). By the impugned order, the State Commission partly allowed the Complaint with the direction to the Opposite Parties to rectify the defects with respect to the noise in the front wheel of the car within a period of one month, together with compensation of 15,000/- and costs of 11,000/-.

2. The brief facts as set out in the Complaint are that the Complainant purchased an Audi Q5 2.0 TDI QUAI IBIS vide Invoice No.11-12-V032, dated 31.08.2011, at a price of 40,43,000/-, from the first Opposite Party. It is averred that immediately after purchase, the complainant noticed a continuous sound problem/ noise from the front side of the wheel during the application of the breaks. It is pleaded that despite several visits, the first Opposite Party miserably failed to rectify the said problem.

3. On 04.01.2012, the first Opposite Party retained the car in its workshop till 14.01.2012 and informed the Complainant that necessary parts have been changed and now, the front wheel would be sound-free. It is averred that the car

had run only 5005 kms as on that date and even after the delivery of the car, the complainant faced the same problem and he had no other alternative but to approach the first Opposite Party again, which had retained the car and did the tyre rotation. Again, on 27.11.2012 and on 06.06.2013, when the car had driven 11,736 kms and 15,221 kms, respectively, the car was once again taken for rectifying the same defect, but in vain. The complainant submitted that on 04.02.2014, the car was taken to the first Opposite Party to set right the same problem, but it refused to rectify the same, unless the complainant had paid a sum of 44,300.68ps.

4. Aggrieved by the demands of the first Opposite Party, the complainant had written a number of emails to the first Opposite Party and Audi India, the second Opposite Party, explaining the problem in detail and stating that it is a manufacturing defect. As both the Opposite Parties had miserably failed to rectify the defect of repeated and continuous noise, he got issued a legal notice to the Opposite Parties on 31.03.2014 for either replacing the said defect of the car or refunding the entire amount of the car, i.e., 40,43,000/-, along with interest @ 18% p.a., from 31.08.2011, till realisation, compensation of 10,00,000/- and costs of 50,000/-.

5. The first Opposite Party filed its Written Version with a preliminary objection that the complainant is not a consumer as the vehicle was purchased in the name of the Proprietorship Firm "RKTV Centre" and he is using the car for commercial purposes. In the Written Version, it is stated that the Complainant had signed the satisfactory note on 14.01.2012 and on 23.06.2012 and the Complainant was adhered to and the break-pads were changed. The Complainant compelled the Opposite Parties to change the break-pads even after the warranty period, which was not possible, as the vehicle had run more than 32,000 kms, in the last two years. There is no manufacturing defect and there is no deficiency of service on its part and seeks direction for dismissal of the Complaint, with costs.

6. The Second Opposite Party filed its Written Version with a preliminary objection that the complaint be dismissed with exemplary costs as it is only a frivolous attempt to allege manufacturing defect and also that the State Commission did not have any territorial jurisdiction to entertain the complaint as the Office of the second Opposite Party is situated outside the jurisdiction of the State Commission. It is further averred that the complainant had taken the vehicle to the OP No.1 on 04.01.2012 and the vehicle reported accidental damages and repairs on 05.12.2011 and the Dealer had brought this to the notice of the complainant that said noise was attended to and even benefits of warranty period were given to the complainant. Damage to the breaks and break-pads are clearly attributable to the usage of the same. The problem was reported after an average interval of 4000 kms which shows that the vehicle was used and no mechanical or manufacturing defect could be attributed to it. When the vehicle was taken to the workshop on 04.02.2014, other problems like fuel lid not locking, sun visor lock broken due to external impact, etc., were informed

and then this complaint about the noise in the breaks was made. Twice, the vehicle had reported for accidental damages, i.e., on 05.12.2011 and 16.08.2013. The repairs were done free of cost during the warranty period, but the complainant wanted the same repairs to be effected free of cost, even after the warranty period which was refused and this prompted the Complainant to file the Complaint.

7. The State Commission, based on the evidence adduced, observed as follows :-

"15. The next question arises that in case the complainant has failed to prove the manufacturing defect but some defects continued in the vehicle, it started from 4.1.2011 and it continued upto 4.2.2014 when lastly it was checked by OPs but at the time they stated that warranty period of two years had passed, therefore, in case any repair will be done that will be against payment. In case defects continued from the warranty period then every possibility that OPs might have not taken proper care to rectify defects, therefore, it continued. No doubt that in some of the job cards, this problem is not there but ultimately, it erupted again and again, then something bad was there, it was not properly attended by OPs, therefore, at least OPs are under legal obligation to rectify the defect. In case the complainant has spent approximately a sum of Rs.44 lacs with the assurance that his vehicle will be defect free and defect continued even after spending a huge amount, then certainly, it will be discomfort to the complainant and there will be no purpose to spend such a huge amount in case you are required to visit the workshop time and again, therefore, deficiency is there in service on the part of OPs. 16. In view of the above, we are of the opinion that there is no manufacturing defect in the car of the complainant, therefore, the relief sought for by the complainant for replacement or refund of the value of the car is hereby declined. However, the complaint of the complainant is partly allowed with the direction to OPs to rectify the defect, if any, with regard to "chu-chu" in the front wheel of the car within a period of one month from the date of receipt of the copy of the order, as and when the vehicle is taken by the complainant to OP No. 1, free of cost. OPs are further directed to pay Rs.15,000/- as compensation on account of harassment and Rs.11,000/- as litigation cost, within a period of one month from the receipt of the order. This amount will be shared by both the OPs".

8. Aggrieved by this order, the first Opposite Party preferred this Appeal.

9. The preliminary objection that the Complainant is not a Consumer, was rightly addressed to by the State Commission observing that the vehicle was purchased by the Complainant in his personal capacity for personal use. In a recent 3-Member judgment, dated 08.07.2016 (OP No.51/2006), this Commission has held as follows:- " For the reasons stated hereinabove, the issue referred to the larger Bench is answered as follows:- (a) If a car or any other goods are obtained or any services are hired or availed by a company for the use/personal use of its directors or employees, such a transaction does not amount to purchase of goods or hiring or availing of services for a commercial purpose, irrespective of whether the goods or services are used solely for the personal

purposes of the directors or employees of the company or they are used primarily for the use of the directors or employees of the company and incidentally for the purposes of the company.

10. The State Commission has also rightly concluded that the Complaint was within limitation as, though, the vehicle was purchased in the year 2011 and the complaint was filed around 21.09.2014, yet, the complainant filed all the job cards from 04.01.2012 to 04.02.2014, when the car was taken to the Dealer for effecting repairs, which show that there is continuous cause of action.

11. It is observed from the record that the State Commission, vide its detailed order dated 20.05.2016 had dismissed the application filed by the complainant seeking expert opinion. As that order has not been challenged, it has reached finality. The complainant had obtained an Expert opinion from Testing & Consultancy Cell, Guru Nanak Dev Engineering College which was examined by a committee comprising of Dr. H.S.Rai, Dean Testing & Consultancy, Er. Balwinder Singh, Associate Professor and Dr. Harmeet Singh, Associate Professor, who, in their report, dated 28.09.2015 have stated five reasons for the cause of noise and have concluded that there was a manufacturing defect and that their report is only an Expert Technical Opinion and no testing of the vehicle has been done. This order has also become final as the complainant did not challenge the same by filing any revision petition.

12. The Learned counsel for the Appellant vehemently argued that when the car was brought to the Appellant for repairs for first free service, on 03.10.2011, the complainant had duly signed the satisfactory note, after the vehicle's switch and fuse were replaced under the warranty period. He further submitted that there was no Complaint regarding any noise in the car. He contended that on 05.12.2011 at 4169 kms, the Complainant brought the vehicle to the showroom in an accidental condition and the Appellant Co., had conducted the necessary repairs and delivered

the car on 06.12.2011 after the complainant had signed the satisfactory note. It was only on 04.01.2012, at 5005 kms, that the Complainant had informed the Appellant, for the first time, that there was noise while applying the breaks. A thorough check-up was done and it was found that the front break-pad had worn out and that the break disc had cracked. The Break-disc and Break-pads worth 30,123/- were replaced, "free-of-cost" as the vehicle was under warranty and was delivered to the complainant, on 13.01.2012, after the complainant had signed the satisfactory note.

13. The Appellant submitted that on 23.06.2012 at 9081 kms, it was found that there was no noise coming from application of the breaks. On 10.09.2012 at 9918 kms, wheel balancing and alignment was done and there was no complaint of noise. On 27.11.2012, when the complainant brought the car for rectifying the defect of the noise coming from the right hand side wheel, the Appellant Co., thoroughly checked the same, had test driven the vehicle and on being satisfied

with the performance, delivered the car to the complainant on the same day itself.

14. The learned counsel for the Appellant submitted that on 15.03.2013, at 13755 kms, the Complainant had brought the car for effecting the repairs. On 15.05.2013 at 15221 kms, a complaint was lodged regarding "chu-chu" noise coming from the right front wheel of the vehicle while applying the breaks. He further contended that the warranty of the break pads and shoe pads (i.e., 6 months or 10,000 kms, whichever is earlier), also stood expired as on that date, but as a pure gesture of goodwill, the Appellant Co., took a decision to change the front break-discs, free of cost. The vehicle was delivered after the Complainant signed the satisfactory note, on 06.06.2013. Likewise, on 16.08.2013 at 18018 kms., 16.10.2013 at 22550 kms and 01.11.2013 at 22550 kms, the Complainant had brought the vehicle to the Appellant Co., which had replaced the right hand side real lock nut, conducted repairs on account of accident and there was no complain of noise in the breaks. He vehemently argued that on 04.02.2014 at 26772 kms, the vehicle was brought to the workshop with Complaints of fuel lid not locking, sun visor broken and "chu-chu" noise coming from the right side of the front side of the vehicle. The Complainant was told that the break-pads and break-discs needed replacement, the photographs of break-pads and break-discs were also taken, an estimate was given by them and the Complainant was told that they cannot be replaced as they were outside the warranty period. On 28.07.2014, at 32109 kms, the vehicle was once again brought to the Dealer's workshop with a complaint of low average. It was contended that all the repairs were effected and there was no noise and further contended that there was no manufacturing defect in the vehicle and also there was no deficiency of service on their part.

15. As only the first Opposite Party is in Appeal, the finding of the State Commission with respect to the car having no manufacturing defect, has not been challenged by the complainant, therefore, only the aspect, whether, the continuous noise had to be rectified free of cost or not has to be examined. In fact, the expert technical opinion filed by the Complainant before the State Commission and also the application seeking appointment of an expert to examine the vehicle, was dismissed by the State Commission. The order has attained finality as the Complainant has not chosen to challenge them.

16. The Hon"ble Apex Court in Maruti Udyog Ltd. Vs. Susheel Kumar Gabgotra & Anr., (2006) 4 SCC 644, has observed as follows: "In Corpus Juris Secundum the observations to which reference was made by the High Court read as follows:

"On a sale of a motor vehicle by a manufacturer to dealer there may be an implied warranty that it is reasonably fit for, or adapted to, the uses for which it is made and sold; and such a warranty is not excluded by the silence of the contract of sale as to warranties."

The principles stated above can never be doubted. But what is relevant in the

case at hand is that the warranty conditions were specially stated. This is not a case of silence of a contract of sale as to warranty. Therefore, the High Court was not justified in directing replacement of the vehicle. But on the peculiar fact of the case relief to the respondent no.1 has to be moulded. In almost a similar case certain directions were given in *Jose Phillip Mampillil v. Premier Automobiles Ltd . (2004 (2) SCC 278)*.

In line with what has been stated in the aforesaid case, we direct as follows:- (1) On respondent no.1 taking the vehicle in question to the authorized service centre of the appellant at Jammu within three weeks, the defective part that is clutches assembly shall be replaced. Respondent no.1 shall not be required to pay any charge for the replacement".

17. It is seen from the record that the car was handed over to the workshop many times when the Appellant had noted the complaint of "noise", the details of which, are as follows :-

Sl.No. Date Kms. Driven Invoice Nos.

- a) 14.01.2012 5005 kms Invoice No.SIP110671 - Break disc and pads changed.
- b) 23.06.2012 9081 kms Invoice No.SIP120277 - complaint of noise.
- c) 27.11.2012 11736 kms Invoice No.SIP120851 - complaint of noise.
- d) 06.06.2013 15221 kms Invoice No.SIP130335 - front break discs changed again
- e) 04.02.2014 26722 kms. Order No.LDH131634 - once again complaint of noise

18. Having purchased an Audi car worth 40,43,000/- the owner would expect a smooth ride without continuous noise emanating on account of application of breaks. Despite the fact that the front break-disc and break-pads were admittedly changed twice and cleaned on two occasions, yet, the issue persisted. Facing constant problems with respect to the car regarding noise, necessitating continuous visits to the workshop have only added to the complainant's agony.

19. Keeping in view the aforementioned judgment of the Hon''ble Apex Court, and having regard to the fact that admittedly, the car was taken to the workshop several times, the front break-disc and break-pads were changed twice and for the third time, for the same problem, for which the front disc pads were changed, on 19.02.2014, the Appellant Company had demanded an amount of Rs.44,300.68ps, the State Commission has rightly observed this demand as deficiency of service and directed the Appellant Co., to only rectify the defects within a period of one month and awarded a reasonable compensation of 15,000/- and costs of 11,000/-.

20. For all the afore-mentioned reasons, it is observed that there is no illegality or infirmity in the order of the State Commission. This Appeal is dismissed, accordingly, in limine . No order as to costs.