
(2024) 12 NCDRC CK 1250

In the National Consumer Disputes Redressal Commission

Case No : First Appeal No. 1913 Of 2017

M/S. Steel Strips Wheels Ltd. & Anr

APPELLANT

Vs

M/S. BMW India Pvt. Ltd. & Ors

RESPONDENT

Date of Decision : 16-12-2024

Acts Referred:

Consumer Protection Act, 1986 — Section 19

Citation : (2024) 12 NCDRC CK 1250

Hon'ble Judges : Subhash Chandra, Presiding Member; Dr. Sadhna Shanker, Member

Bench : Division Bench

Advocate : Deepak Sabharwal, Hema Singh, Diwakar Maheshwari, Jagvir Sharma

Final Decision : Dismissed

Judgement

Dr. Sadhna Shanker, Member

1. The instant appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (for short "the Act") in challenge to the Order dated 01.08.2017 of the State Consumer Disputes Redressal Commission, UT Chandigarh (hereinafter referred to as the 'State Commission') in complaint No. 44 of 2017 whereby the complaint was dismissed.

2. We have heard the learned counsel for the appellants (hereinafter referred to as the 'complainants') and the learned counsel for the respondents No. 1 and 2 (hereinafter referred to as the 'manufacturer' and the 'dealer', respectively) and have perused the record including inter alia the impugned order dated 01.08.2017 and the memorandum of appeal.

None is present for respondent no. 3.

3. The brief facts of the case are that the complainants purchased a BMW 730Ld of BMW 7-Series ('BMW') from the manufacturer through the dealer at Chandigarh for a sum of Rs. 82 lakh for the official/personal use of Dheeraj Garg,

the managing director of complainant No. 1. It is alleged that the car was represented as 'Zero Error Car' and advertised under tag line "sheer driving pleasure, driving luxury and ultimate peace of mind'. The vehicle carried a warranty for a period of two years from the date of its purchase. It is alleged that from the day one of the purchase, the said BMW car started giving problems such as mal-functioning of the clock, improper stereo performance, cracking voice, shaking front left passenger seat, etc. and these defects were brought to the notice of the manufacturer vide letter dated 27.03.2015 as well as vide previous emails dated 11.03.2015, 18.03.2015 & 20.03.2015 exchanged between the parties. Further, vide emails dated 20.4.2015, 16.04.2015 & 15.04.2015, the manufacturer admitted the inherent manufacturing defects in the BMW but they failed to offer any effective resolution to rectify the defects. It is also alleged that the manufacturer had admitted the manufacturing defects in their reply to the legal notice sent by the advocate.

4. Feeling aggrieved, the complainant filed a complaint No. 228 of 2018 before the State Commission and the same was disposed of as settled subject to rectification of manufacturing defects in BMW car. It is alleged that despite change of seat, the defects could not be rectified by the manufacturer and the dealer. Therefore, another complaint No. 320 of 2016 was filed by complainant before the State Commission which was dismissed by the State Commission, vide order dated 07.07.2016 with liberty to file fresh one.

5. Thereafter, the complainant filed a complaint before the State Commission, Chandigarh with the following prayer:-

A. Direct the Opposite Parties to either replace the defective car with a brand new one or refund the amount Rs.82,00,000/- spent on the new car, along with interest from the date of purchase till the date of the payment.;

B. Direct the Opposite Parties to pay a lump-sum amount of Rs.3,00,000/- as token re-imbursement of the various incidental expenses incurred on the running of the car, such as Road Tax, Insurance and which have gone waste, due to inherent defects in the car. ;

C. Opposite Parties also be held liable to pay a sum of Rs.3,00,000/- towards the compensation for the physical and mental harassment suffered by the complainant no.2.

D. Impose a sum of Rs.1,00,000 /- on the Opposite Parties as deterrent/punitive damages for indulging in unfair trade practice of selling a defective car. ;

E. Complaint may be allowed with legal costs of Rs.55,000 /-; and

F. Any other relief to which the Complainants may be entitled to under the facts and circumstances of the matter be passed in favor of the Complainants and against the Opposite Parties.

6. The manufacture and dealer contested the complaint by filing written

statement. It is stated that the complaint is nothing but an abuse of process of law. It is further stated that as per the settlement agreed, the car was properly repaired. It is further stated that the complainants are not a consumer within the meaning of section 2(1)(d) of the Act 1986 as the car was purchased by a company to use it for commercial purpose. It was also stated that no cause of action had arisen in favour of the complainants to file the instant complaint. It is also stated that this Commission has no pecuniary jurisdiction to entertain and decide this complaint as the aggregate value of the relief claimed would cross Rs. 1 crore. On merits, it is also stated that there was no manufacturing defect in the car as all the defects as reported by the complainants were rectified. It is further stated that as the Qua report was obtained at the back of the manufacturer and the dealer, no reliance can be placed upon the same.

7. The State Commission vide its Order dated 01.08.2017, dismissed the complaint being devoid of merit.

8. Aggrieved by the Order dated 01.08.2017 of the State Commission, the complainant has filed the instant appeal before this Commission with following prayer:

(a) Admit the present Appeal and set aside quash / quash Final Judgment and Order dated 01.08.2017 passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh in Complaint Case No. 44/2017 titled "M/s. Steel Strips Wheels Ltd. & Anr. Vs M/s BMW India Pvt. Ltd. & Ors.'

(b) Direct the Respondent No.1 to No.3 to replace the defective car with a brand new one or refund the amount of Rs.82,00,000/- (i.e., Rupees Eighty-two Lac only) spent on the car, along with interest from the date of purchase till payment,

(c) Direct the Respondent No.1 to No.3 to pay a lump-sum amount of Rs.3,00,000/- (i.e., Rupees Three Lac only) as token reimbursement of the various incidental expenses incurred on the running of the car, such as Road Tax, Insurance, etc., as the amount has gone waste, due to the inherent defect in the car,

(d) Direct the Respondent No.1 to No.3 to pay a sum of Rs.3,00,000/- towards compensation for the physical and mental harassment suffered by the Appellant No.2,

(e) Impose on the Respondent No.1 to No.3, a sum of Rs.55,000/- (i.e. Rupees Fifty-five Thousand only) as deterrent/punitive damages for indulging in unfair trade practice of selling a defective car.

(f) Pass such other or further order(s) / direction (s) as deemed fit by this Hon'ble Court in the interest of justice."

9. Before us, learned counsel for the complainants argued that the BMW car in question was not purchased for resale or hire purpose but for official/personal

use of the complainant No. 2, the Managing Director of the complainant no. 1, therefore, it cannot be said that the vehicle was purchased for the commercial purpose. It is further argued that the manufacturer and the dealer had not specifically denied the averments made by the complainants to the effect that the said vehicle had been purchased by the complainants for the use of the complainant no. 2, the Managing Director of the complainant No.1 and since the said averments were neither specifically denied by the manufacturer and the dealer, as required under Order VIII Rule 3 C.P.C., therefore the same were deemed to have been admitted by the manufacturer and the dealer. Further, he argued that in the settlement terms recorded in consumer complaint No.228 of 2015, the first obligation was of the manufacturer to rectify the manufacturing defects in the subject car and to extend the warranty period for additional one year from 03.11.2016 but the same has not been done by the manufacturer. Therefore, the manufacturer had committed violation / derogation of settlement terms and not the complainants.

10. Further, it was submitted that through its various communications i.e. emails dated 20.4.2015, 16.04.2015 & 15.04.2015, the manufacturer admitted the inherent manufacturing defects in the BMW car and also it had admitted the technical report of 'SYMEO', the technical expertise in "Road Load Data Acquisition" and "Fatigue Testing" of components using servo hydraulic facility and for the simple reason that the manufacturer had neither specifically denied in its reply to the complaint nor had cross examined them to check the testimony of the said technical report, it is deemed to be accepted and proved. Even otherwise, in relation to service of the manufacturer, any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the said BMW car will be maintained by manufacturer and failing to rectify the defects such as mal-functioning of the clock, improper stereo performance, cracking voice / shaking front left passenger seat, etc., are the deficiencies in service on its part. Further, It is further argued that upon perusal of the invoice, it is revealed that the year of manufacture of BMW car was 2013 and was sold to the complainants in November, 2014 and keeping the manufacturing defects in mind, the complainants strongly apprehends that the BMW as sold to the complainants was not a brand new BMW but it was a used one. It is further argued that the representing of the said BMW car under the tag line as 'Sheer Driving Pleasure, Driving Luxury and Ultimate Peace of Mind' constitutes unfair trade practice on the part of the manufacturer and the dealer.

11. Further, it was submitted that the State Commission completely discarded the technical report of SYMEO which is neither rejected nor denied by the manufacturer and the dealer and therefore, the same is accepted documents and by discarding the technical report of SYMEO, the State Commission violated the provisions of Section 58 of India Evidence Act.

12. Further, it was contented that the State Commission failed to appreciate that the passing of resolution by the board of the company was not a mandatory

requirement to purchase a car at the relevant period of time and that the complainants incurred substantial cost and expenses to rectify the inherent defects in the said BMW car which show the bonafide of the complainants to get the said defects rectified. In support of their contentions above, the counsel for complainants also relied on the following case decisions:

a. Crompton Greaves Limited & Anr. Vs. Daimler Chrysler India Private Ltd. CC No. 51 of 2006 (NCDRC) decided on 8.07.2016.

b. V. Kishan Rao Vs Nikhil Super Specialist Hospital [2010 (5) SCC 513

c. C N Anantharam vs M/s Fiat India Ltd Ors., Special Leave Petition (C) Nos. 21178-21180 of 2009 decide on 24.11.2010. 13.

13. Learned counsel for the manufacturer rebutted the complainants' arguments and submitted that complaint and the instant appeal are in complete defiance of settlement terms consented to by the parties before the State Commission in complaint case No. 228 of 2015, i.e. the first complaint filed by the appellants. The State Commission duly recorded the unconditional acceptance of settlement terms by the representative of complainants in the order dated 20.01.2016. The complainants agreed to having the seat of the car replaced free of cost subject to the complainants not raising any issue regarding the car seat, clock, and stereo system again. Admittedly, the car seat was replaced by the manufacturer and the dealer free of cost.

14. Further, it is submitted that this Commission in the case of M/s Radio Time vs Shri Lila Ram Bohra and Others (2012) NCDRC 437 held that "It is not that every order passed by the Fora below is to be challenged by a litigant even when the same is based on sound reasoning" and imposed costs while dismissing the petition.

15. In the present case, as is evident from the impugned Order, the State Commission after carefully examining the evidence on record and the arguments made by the parties has passed a reasoned order while dismissing the complaint.

16. Further, it was argued by the counsel for the manufacturer that "consumer" does not include a person who obtains goods / services for commercial purposes. Reliance is placed on:

i. Lohia Starlinger Ltd v. Zenith Computers Ltd. [1 (1991) CPJ145]

ii. H. Vasanthkumar v. Ford India Ltd. [First Appeal No. 490/2004}

iii. Victory Electronics Ltd. V. IDBI bank Ltd. [CC No. 248/2011]

iv General Motors India Pvt. Ltd. V. G.S. Fertilizers (P) Ltd. And India Automobiles (1960)Ltd. [1 2013 CPJ 72 (NC)]

17. Therefore, in the present case, the finding of State Commission that the vehicle was purchased for commercial use and that the complainants do not fall within the definition of a 'consumer' was based on the admitted facts that vehicle

was purchased and registered in the name of complainant no. 1 and that neither is there any board resolution nor any appointment terms of complainant no. 2 indicating that the vehicle was purchased solely for the personal use of complainant no. 2 as also there is nothing on record to demonstrate that the complainant no. 2 was entitled to receive a car as part of his remuneration and that there is no assertion that the car was purchased solely for personal use of the complainant no. 2. It is also stated that the complainant no. 2 had not spent a single penny from his pocket and all expenses in relation to servicing of vehicle were borne by complainant no. 1. In addition to above, the State Commission while rendering impugned order was cognizant of the fact that majority of the communications qua car before its purchase and thereafter were made by representative of complainant no.1. Accordingly, as is evident, the finding that the complainants are not a "consumers" is well reasoned and correct, and ought to be upheld by this Commission.

18. Further, it was submitted that it is a trite law that onus to prove the manufacturing defect lies on the complainants. In support of its contentions, reliance is placed on:

- (i) Baljeet Kaur v. Divine Motors III (2017) CPJ 599 (NC)], - Para 7
- (ii) Suresh Chand Jain v. Service Engineer and Sales Supervisor, MRF Ltd., [I (2011) CPJ 63 (NC)]
- (iii) Classic Automobiles v. Lila Nand Mishra and Ors, I (2010) CPJ 235(NC)
- (iv) Fiat India Pvt. Ltd. v. Mr. Syed Hasan Bukhari & Anr 2014 SCC OnLine NCDRC 659

19. It is well-established that if a defect in goods cannot be determined without proper analysis, an independent expert report is required under Section 13(1)(c) of the Act. In the case of Sukhvinder Singh vs. Classic Automobile [2012] NCDRC 790, the Commission held that such a report is mandatory to prove a manufacturing defect. In this case, the complainants failed to request an expert referral during the proceedings of three consumer complaints from 2015 to 2018. The only evidence submitted was a report of a private agency, 'SYMEO', which was not acknowledged by the manufacturer and the dealer or approved by the State Commission. The Commission in Rakesh Gautam v. M/s Sanghi Brothers (2010) 3 CPJ 105 (NC) rejected a similar expert report due to lack of involvement by the opposite parties. Hence, the complainants have not proven a manufacturing defect in the vehicle. Additionally, the manufacturer's liability is limited to manufacturing defects, as held in Fiat India Pvt. Ltd. vs. Syed Hasan (2014 SCC Online NCDRC 659) and Ajay Sharma vs. Sanya Motors (2012 SCC Online NCDRC 2641). Since the complainants failed to prove such a defect, no liability can be imposed on manufacturer. The replacement of the car seat was merely a goodwill gesture and does not indicate a defect. As such, the appeal lacks merit and should be dismissed.

20. The first question which falls for our consideration is as to whether the complainants are 'consumers' within the meaning of definition under Section 2(1) (d) of the Act, 1986.

21. Upon a careful and thorough consideration of the rival submissions and the perusal of documentary evidence as well as applicable legal principles, it is seen that Section 2(d) of the Consumer Protection Act, 1986 excludes from the definition of "consumer" persons who purchase goods for commercial purposes. It is evident that the vehicle was purchased in the name of complainant no. 1, a corporate entity rather than complainant no. 2 in his personal capacity. The complainants failed to produce any board resolution or other corporate document establishing that the vehicle was purchased solely for the personal use of complainant No.2. The question of company purchasing a car for the use of its director was decided by the larger bench of the National Commission in *Crompton Greaves Limited & Anr. vs Daimler Ltd.* (supra) wherein it has been held that:

"11. (b) The purchase of a car or any other goods or hiring or availing of services by a company for the purposes of the company amount to purchase for commercial purpose, even if such a car or other goods or such services are incidentally used by the directors or employees of the company for their personal purposes."

In this case, there is admittedly no board resolution nor appointment letter indicating that car was purchased solely for personal use of the complainant no. 2, managing director of complainant no. 1. Hence, we are in agreement with the finding of the State Commission that the complainants are not 'consumers' within the meaning of the Act, 1986.

22. This bench is of the opinion that the complainants are not 'consumers' within the meaning of Section 2(1)(d) of the Act, 1986, therefore, there is no need to enter into the merits of the case.

23. In the result, the appeal is dismissed being not maintainable. However, the complainants are at liberty to avail the appropriate remedy available to them in accordance with law. All pending applications, if any, stand disposed of.