
(1996) 04 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

National Garage Ltd

APPELLANT

Vs

Ramesh Hansraj Gandhi

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Citation : 1996 2 CLT 671 : 1996 2 CPC 263 : 1996 2 CPJ 43 : 1996 2 CPR 92

Hon'ble Judges : V.BALAKRISHNA ERADI , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

Judgement

1. FIRST Appeal No. 552/93 by the National Garage Ltd. and First Appeal No. 613 /93 by Ramesh Hansraj Gandhi are directed against the order dated 11.8.93 passed by the Maharashtra State Commission at Bombay allowing the complaint and directing opposite party Nos. 1 & 2 jointly and severally to remove the defects mentioned in the report of the Surveyors submitted by M/s. Western India Automobiles Association Ltd., Bombay and to place the car in possession of the complainant in perfect good condition besides directing the second opposite party to pay to the complainant Rs. 50,000/- towards the loss suffered by the complainant for the non-use of the vehicle. Both the parties were directed to pay costs of Rs. 2000/-.

2. IT is unnecessary to note the facts in detail for we are inclined to remand the case to the State Commission for de novo trial of the complaint of Shri Ramesh Hansraj Gandhi. The complainant purchased Ambassador Nova Diesel Car on 29.8.91 from Hindustan Motors Ltd. at a cost of Rs. 2,35,000/-. The complainant alleged that the said car had manufacturing defects and within nine months from the date of the delivery, the car had been kept in garage for replacement of defective parts and repair of mechanical complaints for a period of about three months. The complainant alleged that after check and repair the following defects were persisting : 1. Rear wheel oil seal was again spoiled. 2. Clutch was not functioning properly as it had manufacturing defect. 3. Gear was defective, the defect was admitted by dealer that it was a manufacturing defect. 4. Differential was defective. 5. Steering nuts were broken and coming out. The complainant had detailed the other defects in the complaint and claimed the

refund of Rs. 2,35,000/ - or to deliver fully checked new car in replacement of defective car.

On being noticed the opposite parties did not file their reply within the period of 30 days stipulated under Consumer Protection Act, 1986. The opposite parties appeared on 3.3.93 Mr. Bhasin, Advocate for M/s. Hindustan Motors Ltd. and Mr. Mogare were present. In their presence the State Commission directed that the motor vehicle of the complainant bearing No. MH -01 -B -5061 Nova Model be sent to Western India Automobile Association, Bombay to be inspected and to report to the Commission any defect appearing on the said vehicle. Although the reply was not filed by the opposite parties, the case of the opposite parties is that reply dated 9.3.93 was tendered but the Registry of the State Commission did not allow it to be filed. The version of the opposite parties was not before the State Commission when it passed the order under appeal. The complainant has filed an affidavit in. this appeal along with a chart showing the period for which the car was kept in the garage by the 2nd opposite party and the nature of work carried out with bill, reference and date and the amount paid. The State Commission found that the complainant could not use the new car and was deprived of its use because of deficiency in service for 14 months of the 2nd opposite party. Even according to the complainant the car remained in the garage for only about 120 days. The State Commission further found that the car was not delivered back to the complainant. Even according to the complaint, the car was delivered back to the complainant on 3.7.92. If the State Commission had allowed the filing of the reply version of the opposite party and had considered the version of the opposite party it would not have come to an erroneous conclusion that the complainant could not use the new car for a period of 14 months and that the car was still with the opposite party No. 2 whereas admittedly it was delivered to the complainant on 2.3.92. We wish to say no more any expression of opinion may prejudice either of the parties or the discretion of the State Commission in its coming to an independent conclusion.

3. WE , therefore, set aside the impugned order and remand the case to the State Commission with a direction to take the written version of the opposite parties on record and dispose of the complaint after affording an opportunity to the parties to substantiate their respective versions. We make no order as to costs. Ordered accordingly.