
(2005) 07 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

ORISSA AGRO INDUSTRIES CORPORATION LIMITED

APPELLANT

Vs

Ekadasi Samal

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Citation : 2005 4 CPJ 591

Hon'ble Judges : R.K.PATRA , SUBASH MAHTAB J.

Judgement

1. BOTH the appeals are directed against the order dated 26.9.1996 passed by the Dhenkanal District Forum in C.D. Case No. 38 of 1995. By the said order appellant in C.D. Appeal No. 831 of 1996 has been directed to make on the repairs of the tractor belonging to the respondent No. 1 within two months and bring the same to its normal working condition. The said appellant (vide C.D. Appeal No. 831 of 1996) and appellants in C.D. Appeal No. 785 of 1996 have been jointly and/or severally directed to compensate the respondent No. 1 by paying a sum of Rs. 10,000 and costs of Rs. 500.

2. BOTH the appeals being analogous, they were heard together and are disposed of by this common order. The appellant in C.D. Appeal No. 831 of 1996 is the manufacturer of the tractor whereas appellants in C.D. Appeal No. 785 of 1996 are the dealers of the tractor in question.

3. THE complainant in both the appeals is respondent No. 1. His case is that he took loan amounting to Rs. 1,77,462 from the Co -operative Agricultural Rural Development Bank, Kamakhyanagar and with that amount he purchased a HMT tractor manufactured by the appellant in C.D. Appeal No. 831 of 1996 through the dealer who are appellants in C.D. Appeal No. 785 of 1996. He purchased the tractor for intensive cultivation of his land. He got delivery of the same on 17.11.1992 through the appellants in C.D. Appeal No. 785 of 1996. After one month of its use its hydrolic sinking, bevel penion and crown penion were damaged because of inherent manufacturing defects. The damage was within the warranty period. Due to such defects he could not operate the tractor. It remained idle on account of which the differential shaft and C.I. shaft were also

damaged. He could not utilize the tractor for his cultivation for which his agricultural operation was substantially hampered. He brought this fact to the notice of the appellants who deputed their mechanic but it was of no practical use. In the circumstances, he prayed for replacement of the tractor with a new one or in the alternative to pay the costs in addition to compensation of Rs. 1,50,000.

4. THE appellants filed their written version denying their liabilities. The District Forum on consideration of the materials produced before it has held that the tractor in question started giving trouble one or two months after the purchase and although mechanic was deputed for several times he was unsuccessful because of the manufacturing defects. It further held that as the tractor remained unutilized even after the warranty period, the respondent No. 1 could not put the tractor into service.

5. THERE is no dispute that the respondent No. 1 purchased the tractor and took delivery of the same on 17.11.1992.

6. THE appellants contended before the District Forum that as the tractor was used for commercial purpose the respondent No. 1 cannot be held to be a consumer. It was rightly rejected because there was no material produced before the District Forum to show that the respondent No. 1 at any time used the tractor for commercial purpose. On the other hand, the materials available on the record would show that the respondent No. 1 purchased the tractor for cultivating his own land. The following documents produced by the parties would show that the tractor started giving trouble soon after it was purchased. (i) By letter dated 8.12.1992 the respondent No. 1 brought to the notice of the dealer that the hydrolic system of the plough was not properly working and the same was dragging on earth. (ii) By letter dated 15.1.1993, respondent No. 1 again wrote to the dealer saying that although the mechanic had come and checked the tractor it was of no consequence because the left side bearing of the tractor was found to have been damaged. (iii) In the representation dated 4.6.1993 the respondent No. 1 wrote to the Co-operative Bank from which he took loan saying that the tractor was giving constant trouble. In another set of representations dated 3.6.1993, 3.9.1993 and 24.11.1994 addressed to the dealer, the respondent No. 1 made a grievance that despite his repeated complaint no steps were taken to get the tractor set right. (iv) The financed Bank in its letter also informed the dealer that defects were found in the tractor for which it could not be utilized. Even in letter of the dealer (i.e., appellants in C.D. Appeal No. 785 of 1996) dated 23.1.1993 the respondent No. 1 was informed that their mechanic Iswar Mohanty was being deputed to examine the tractor. (v) Reports of Iswar Mohanty, Mechanic dated 16.12.1992, 24.12.1992, 29.1.1993 and 4.3.1993 indicate that he attended the repair works of the tractor on different occasions. But despite that, different parts like differential shaft, shaft bearing pull up of the spring, tarson bar, oil seal etc. were damaged. The manufacturer i.e., (appellant in C.D. Appeal No. 831 of 1996) also indicated that

they requested the dealers to depute a service engineer to rectify the defects by replacing components from their stocks. All these defects were within the warranty period being 1000 working hours. From the above analysis we have no hesitation to hold that the tractor gave trouble to the respondent No. 1 soon after it was purchased and the same remained idle. A cultivator presses a tractor into service to raise his harvest but the respondent No. 1s dream was shattered.

7. IN view of what has been stated above, the decision of the District Forum with regard to the existence of manufacturing defects of the tractor cannot be faulted with.

8. WE do not find any merit in both the appeals which are hereby dismissed with costs assessed at Rs. 2,000. Mr. Subash Mahtab, Member. -I agree. Appeals dismissed with costs.