
(1991) 01 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

PADMA V.AMRAPURKAR

APPELLANT

Vs

J.WILLIAMS And CO.

RESPONDENT

Date of Decision : 31-01-1991

Acts Referred:

Citation : 1992 1 CPJ 150

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Final Decision : Complaint partly allowed

Judgement

1. THE complainant moved this Commission by filing a complaint claiming compensation of Rs. 3,54,000/- against the Hindustan Motors Ltd., the manufacturer of "Ambassador" Motor Car. THE complainant has alleged manufacturing defects as well as deficiency in the service after sale.

2. THE short facts are that the complainant purchased an ambassador car on 19.12.1988 for Rs. 1,50,000/- with meter reading at 1930 kms. According to the complainant when the car was delivered to her, pre delivery inspection was not done. However at the time of the first free service in January, 1989 the meter reading was 2700 kms. THE complainant found heavy consumption of oil. THE second free servicing was done in the month of February, 1989 when the meter reading was shown as 4945 kms. THE complainant alleged that even at that time, the heavy oil consumption was noted; in addition, starting trouble was developed. M/s. J. Williams & Co., Pune Opposite Party No. 1 happens to be the local Agent of the Hindustan Motors Ltd. THE aforesaid two services were, therefore, rendered by M/s J. Williams & Co. At the time of the second servicing, because of the starting trouble; fly wheel was changed. Third free service was on 27.3.89. At that time also, starting trouble was continuing. There was difficulty in the head light due to opaque glass. However, the fly-wheel was again changed on 4.5.89 at 5600 kms. Still the motor car was not giving proper service. On 26.5.89 a letter was written to the Zonal Manager of M/s Hindustan Motors Ltd. but not reply was received. On 3.6.89 another letter was addressed to the Chairman of Hindustan Motors describing the defects in the motor vehicle. On

19.6.89, when the car was taken to M/s. J. William & Co. by the complainant, no service was rendered by the Company although there was defect in the vehicle. On 23.6.89, the Hindustan Motors Co. wrote back to complainant stating that M/s. J. William & Co. has been advised to check the engine of the car and that Mr. S.J. Soares of Hindustan Motors would see during his next visit at Pune. On 11.7.89 M/s Hindustan Motors wrote back to complainant that they cannot replace the car but the dealer will attend to the car immediately under conditions of warranty. On 26.7.89 the complainant made complaint to the Chairman of M.R.T.P. Commission, Travankore House at New Delhi. In her complaint, the complainant made similar grievances about her car. On 21.10.89, the M.R.T.P. Commission forwarded the grievances of the complainant to M/s. Hindustan Motors Ltd. for their comments. A copy of which was endorsed to the complainant, which is placed on record. It appears that on the basis of the directions from the M.R.T.P. Commission the repairs were carried out by M/s J. Williams to the complainant's motor car and complete engine was changed. Prior to that, it is seen from the record that in August, piston, bushing etc. were changed. It is stated before us by M/s J. Williams & Co. that the price of the Engine is more than Rs. 25,000/- and therefore the engine was changed during the warranty period on approval from Hindustan Motors. This is found recorded in a letter from M/s J. Williams & Co. dated 10.11.89. However, it was mentioned that the warranty conditions mentioned in card supplied with the car will apply. M/s J. Williams also obtained satisfaction note under the signature of the complainant at that time.

According to the complainant when the original engine was replaced in the car the Srl. Number of the original engine was stamped on the replaced engine block. She further stated that despite the installation of new engine, starting trouble continued and therefore, she approached the opposite party. But since they did not carry out the necessary free service stating that the warranty period was over she approached this Commission by filing the present complaint. She has, therefore, claimed in this complaint compensation of Rs. 3,54,000/- under different heads. In response to the notice u/Sec. 13 of the Consumer Protection Act, the opposite party filed written reply which is on record. The opposite party admitted the purchase of motor car by the complainant and the post sale service rendered to her as detailed in the complaint. It is also admitted that the new engine was replaced after the direction of the M.R.T.P. Commission. However, according to the opposite party, since the vehicle is purchased by the complainant for taxi purpose, she is not a consumer within the meaning of Section 2(d) of the Consumer Protection Act, 1986. The points, therefore, arise for our determination are:- (i) Whether the complainant is a consumer? (ii) Which of the opposite parties is a manufacturer is liable to render the free service to the motor vehicle during the warranty period? (iii) To what relief the complainant is entitled?

We have heard Ms. Sudha Amrapurkar who appeared for complainant. Shri Dara, Advocate appeared for Opposite Party No. 1, M/s. J. Williams & Co. Shri

Talegaonkar, Advocate appeared for the opposite party No. 2. It is an admitted fact that the ambassador car in question was purchased for running a taxi. We hold that the complainant is not a "consumer" within the meaning of Section 2(d) of the Consumer Protection Act and therefore, not entitled to the relief for the replacement of the new car or entitled to claim the price of the new car. Similarly, she is also not entitled for any amount towards the payment of Bank instalments with interest as claimed in the complaint. The case of the complainant is hit by clause (i) (d) of Section 2 of the Consumer Protection Act as she purchased the motor car for commercial purpose of running a Taxi. But her case falls under clause (ii) (d) of Section 2 of Consumer Protection Act. We will deal with it later on. During the course of the arguments it was clarified by the opposite parties that the opposite party No. 1, M/s J. Williams & Co. is the local Dealer and is not a manufacturer of M/s Hindustan Motors Ltd. Undoubtedly the opposite party No. 2, M/s Hindustan Motors Ltd. is the manufacturer of the Ambassador Car within the meaning of Section 2(j)(i) under the Consumer Protection Act. It is also clarified by the opposite parties that the car was delivered through the local Dealer opposite party No. 1 who was to render the post delivery free service to the car within the warranty period. It is also stated that under the terms of agreement between the opponents, if there is any replacement of part below the price of Rs. 25,000/- , the dealer can replace it and if the value of the part is more than Rs. 25,000/- the Dealer can replace it subject to the approval of the authority of the Hindustan Motors Ltd. It is, therefore, clear that the responsibility about the post sale service rests jointly on both manufacturer as well as Dealer in relation to the Ambassador Motor Car. A blank warranty card of Ambassador Car is placed on record issued by the Hindustan Motors Ltd. Our attention was brought to the Rule 4 and 5 appearing in the warranty card. Under Rule 5, the liability of the Company is limited to exchange of parts or repairs on terms mentioned above. Replacement of car and form of liability or loss of time inconvenience, loss of use of the car, or other consequential damages is hereby expressly excluded. In view of the time to time repairs carried out by M/s J. Williams & Co. and the replacement of the engine by M/s Hindustan Motors Ltd. free of cost within the warranty period. In other words, we find that the complainant was treated as entitled by opposite parties to the service to her car within the warranty period. The warranty period is available under Rule 1 of the warranty card, 12 months or 16000 kms. whichever cross earlier from the date on which the new car is delivered. According to the complainant, since a new engine has been installed in November, 1989, fresh warranty period commenced upto a period of 12 months or 16000 kms. running of the vehicle and therefore, in view of the fresh warranty period the opposite parties were liable to render free replacement of parts and service. According to the complainant as there were defects in the car the complainant was entitled to free service after the replacement of new engine. According to the opposite party since on 9.11.89, the complainant has signed the satisfaction note she was not entitled to any free service after the installation of the new engine. In the warranty card it is clearly written that the period of twelve months or 16000

kms. whichever occurs earlier is to be counted from the date of the delivery of the new car. Therefore, there cannot be extension of warranty period when a new engine is replaced in the car. The contention of complainant must fail on this count. However, we find that the complainant had a right of service to her vehicle within the warranty period free of costs as per the terms of conditions mentioned in the warranty card. A warranty is an affirmation at the time of sale by the seller and the offer of warranty accepted by the buyer and who has acted on it to make the collateral contract of warranty complete. The concept of warranty is well defined in Section 12(3) of the Sale of Goods Act. It reads "A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated. In the sale of Ambassador Car in question the warranty as per its terms was a stipulation in the contract of sale by Hindustan Motors. Hence in our view the complainant has a right to claim compensation in terms of repair or rectification expenses including costs of transportation of the defective goods for repair in addition to the loss of income or profits for the period lost in repairs.

3. THE complainant has claimed a loss of Rs. 1 lakh during the period of 1.5 years and also claimed Rs. 50,000/- towards mental worries and physical exertion. U/- Sec. 14(1)(d) of the Consumer Protection Act, the consumer is entitled to an amount of compensation for any loss or injury suffered by him due to the negligence of the opposite party. If a consumer satisfies the test of this provision, the consumer is entitled to a compensation. In the instant case, we find that the complainant had to take her car to M/s J. Williams & Co. for getting free service on many occasions. We have stated in the facts that the complainant was required to take the motor vehicle to M/s J. Williams & Co. on numerous occasions. This fact is not disputed by the opposite party. It is found from the numerous documents on record tendered by the opposite party No. 1 that the motor car in question was required to be taken to opposite party No. 1 for replacing various parts. THE nature of service and replacement are mentioned in the job cards issued from 5.1.89 to 10.11.89. It is thus clear that M/s J. Williams carried out repairs and replacement of parts because some of the parts of the ambassador car in question were either defective or substandard as a result of which the motor was not giving proper service. Had those parts been in good condition there was no necessity for the opposite party No. 1 to replace the parts. We can understand that minor repairs may be necessary to a new motor vehicle but to our surprise, we find that the entire engine was required to be changed. It shows that there was inherent defect in the engine. No manufacturer of the motor car would have been required to replace the entire engine within the warranty period unless it was defective. To wriggle out of this situation the only stock arguments advanced by the opposite party No. 2 was that the complainant is a woman of recalcitrant nature and therefore to buy peace they have replaced the various parts and engine. It is very difficult to accept this argument. No manufacturer will incur economic loss to the tune of more than Rs.

25,000/- just for the sake of buying peace from a recalcitrant customer. Taking into consideration the admitted facts of the car having been required to be taken for repairs on many occasions within such a short period with less than 10,000 kilometers running clearly indicates that the motor car was having manufacturing defects and hence the complainant was required to take the motor vehicle to the garage. As the car was required to be taken to the workshop frequently it was bound to affect Taxi business, apart from other inconvenience and losses. We are convinced that due to the negligence of the manufacturer in manufacturing and assembling the car supplied to complainant which was not giving satisfactory performance, the complainant was compelled to approach the Local Dealer for getting the defects removed. We now come to the grant of compensation to the complainant. We are not prepared to accept the claim of complainant for Rs. 1,50,000/- towards mental and physical sufferings. It appears to be an exaggerated claim. However, we find that there was negligence on the part of opposite party No. 2, Hindustan Motors Ltd. in that they supplied a defective vehicle to the consumer. Unless the vehicle was defective the consumer in this case would not have been required to approach M/s J. Williams and Co. frequently for one or the other complaint during the warranty period. THERE is documentary evidence to establish the defective nature of the vehicle. THE job cards filed on record by party No. 1 clearly show the defects. Thus we have to hold that the complainant had to suffer by taking the motor vehicle from time to time to the garage of M/s J. Williams & Co. for repairs. Considering the sufferings of complainant we have also to hold that there was some business loss to the complainant and consequently mental harassment. THE opposite parties have stated before us that the complainant never suffered any business loss as the taxi was being seen daily in use and was not at all in idle form. But from the job cards, it is clear that the taxi was in garage for more than 12 days for carrying out the minor repairs. It was also in the garage for replacement of new engine which must have taken at least two weeks. THESE are of course the days which are borne out from the records but the complainant must have been required to take the taxi out of the business and to approach the garage for the enquiries of repairs. We, therefore, find that the complainant lost business a least for 30 days for taking the vehicle to the workshop of party No. 1. We, therefore, quantify the total damages payable to the complainant at Rs. 22,000/- . This amount includes the loss of business for 30 days and injury suffered by complainant. This also includes the cost of litigation. In our view, it would meet the ends of justice if the complainant is allowed a total claim of Rs. 22,000/- towards compensation due to the negligence on the part of M/s Hindustan Motors Ltd. in that it supplied a defective vehicle which could not give normal service during warranty period and did not conform to a particular standard quality and composition. Thus we pass the following order:- ORDER The opposite party No. 2, M/s Hindustan Motors Pvt. Ltd. shall pay Rs. 22,000/- towards compensation and costs in full and final satisfaction of the claim of the complainant in this complaint within a period of two months from the date of this order, failing which the aforesaid amount shall carry interest at the rate of 18% p.a. from two months from the date of this

order. We find that the dealer opposite party No. 1 has tendered free service during warranty period and does not appear to be responsible for the defects in the manufacture of the vehicle. Thus he is not responsible for any payment of amount to the complainant. Complaint partly allowed.