

(1992) 02 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

PRABHAKAR TEKRIWAL

APPELLANT

Vs

AUTO DISTRIBUTORS LTD

RESPONDENT

Date of Decision : 24-02-1992

Acts Referred:

Citation : 1992 3 CPJ 222

Hon'ble Judges : B.N.Sinha , K.P.Sinha J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant has filed this complaint petition with the allegation that he delivered a Car bearing No. BHQ - 515 on 11.4.91 to the opposite party for denting and painting and an advance of Rs. 10,000/- was given to the opposite party on 20.4.1991 for the work entrusted by the complainant to the opposite party; and that the opposite party promised that the car will be delivered to the complainant after the works done after a month; but the opposite party started work in the car in July, 1991 and hence the car has not been delivered to him as yet. It has been further alleged by the complainant that he along with his driver has visited the workshop of the opposite party regularly but even the denting work has not been completed and due to this deficiency in service on the part of the opposite party, he has suffered loss of more than Rupees One Lakh and he has claimed compensation. Two enclosures have been filed along with the complaint petition showing the receipt of Rs. 10,000/- by the opposite party on 20.4.91 and a photo stat copy of the repair order showing different works to be done in the car by the opposite party.

2. THE opposite party appeared and filed written statement admitting that the car was handed over to him for certain works, the details of which are mentioned in the enclosure - the copy of the repair order filed along with the complaint petition by the complainant and the opposite party has admitted the receipt of Rs. 10,000/- for the said works bearing job No. 73 dated 11.4.91. But, the opposite party has denied that he promised to hand over the car after necessary repair after a month and it has been asserted that the opposite party had been

ordered to do other works also besides denting and painting as is evident from the photo-stat copy of the repair order filed by the complainant enclosed to the complaint petition, which cannot be completed in a month, therefore, no such promise of delivering the car after a month could be made. THE opposite party has also challenged the maintainability of this complaint petition on the ground that as the complainant is not the owner of the car and the owner of the car is Shankar Prasad Tekriwal and he paid Rs. 10,000/- for the works to be done in his car as is apparent from the two enclosures filed with the complaint petition, therefore, the complainant is not a consumer and he has no locus standi to file this complaint petition and on this ground alone the complaint petition is fit to be dismissed. It has been further asserted that no promise was made regarding the period of completion of the works which is apparent from the fact that even on 4.12.1991 some more work in that car was entrusted to the opposite party; and that the car is ready for delivery after all necessary works but the owner of the car is not taking delivery of the same after payment of the cost thereof, though he is aware of the bill containing the cost of the necessary works done in the car. After filing of the written statement by the opposite party, the complainant filed reply thereof alleging inter alia, that the car belongs to his father; and that he has filed the present complaint petition as he has been authorised by his father to file the complaint petition and to make necessary pairvi with regard thereto. Authorisation paper dated 8.9.91 by which the complainant has been authorised by his father to that effect has been enclosed with the reply.

Learned counsel for both the parties were heard.

3. UNDER the Consumer Protection Act (herein after referred as "the Act") a complaint can be filed by a consumer or by any recognised consumer association or the Central or State Government. Section 12 of the Act contains necessary provision with regard thereto. UNDER these circumstances, on the basis of the authorisation slip, the complainant was not entitled to file the complaint under Section 12 of the Act. But it has been submitted by the learned counsel appearing on behalf of the complainant that he is a consumer in the sense that he has been using the car, though the car was purchased and stands registered in the name of his father But no such case has been put-forth by the complainant either in the complaint petition or in the reply to the written statement filed by him. So we are not inclined to accept this submission made by the learned counsel for the complainant Moreover, the case of the complainant that the opposite party had promised to deliver the car after a month is not being corroborated by the enclosures filed on behalf of the complainant. It is not so mentioned in any of those enclosures. Not even a chit of paper has been filed on behalf of the complainant to indicate mat the opposite party made any such promise at the time of delivery of the car to him on 11.4.91 or on 20.4.91, rather the definite averment on behalf of the opposite party in the written statement is that no such promise was ever made and even on 4.12.91 another job in the same car was entrusted to the opposite party. This is also being supported by the enclosures filed by the opposite party along with the written statement. But, in

his reply, the complainant has not controverted this definite statement of the opposite party in his written reply to the written statement

4. UNDER these circumstances it cannot be said that there has been any deficiency in service on the part of the opposite party. Lastly, it has been rightly submitted by the learned counsel for the opposite party that since the owner of the car has not taken delivery of the car, therefore any deficiency in the service with regard to the work done by the opposite party in the car cannot be alleged. Taking into consideration the facts and circumstances discussed above, we find and hold that the complainant has failed to make out any case against the O.P. and he is not entitled to any relief.

5. IN the result, the complaint petition is dismissed. Complaint dismissed.