**(2013) 04 NCDRC CK 0005**

**In the National Consumer Disputes Redressal Commission**

RAJIV GULATI APPELLANT

Vs

Tata Engineering And Locomotive Company Ltd. And Ors. RESPONDENT

**Date of Decision :** 23-04-2013

**Acts Referred:**

**Citation :** (2013) 04 NCDRC CK 0005

**Hon'ble Judges :** J.

**Final Decision :** Disposed off

## Judgement

1. COMPLAINANT and the opposite parties before the State Commission have filed these Appeals against the order and judgment dated 16.9.2008 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission'') in Complaint Case No. C -68/02 whereby the State Commission partly allowing the complaint has directed the Respondent, Tata Engineering and Locomotive Co. Ltd. to pay a lump sum compensation of Rs. 2,00,000 to the Complainant along with costs of Rs. 10,000. Facts:

Complainant/Appellant in First Appeal No. 466/08 and the Respondent in First Appeal No. 483/08 (hereinafter referred to as the "Respondent") purchased a Tata Safari Vehicle from M/s. Concorde Motors, authorized dealer of the Tata Engineering & Locomotive Co. Ltd., the manufacturer - Appellants in First Appeal No. 483/2008 and Respondents in First Appeal No. 466/08 (hereinafter referred to as the "Appellant") for a sum of Rs. 9,05,696 on 30th September, 2000. Soon after taking the delivery of the vehicle. Respondent found on 13.12.2000 that the Power Steering of the vehicle was not working properly. The vehicle was sent to the service centre of the authorized dealer who rectified the defect. Thereafter, again on 3.1.2001, 31.1.2001 and 3.3.2001, the vehicle was sent to the service centre of the authorized dealer for rectifying the same defect. On 22.3.2001, Respondent found leakage in the power steering and got the vehicle checked from service centre of the Appellant. The vehicle was re -inspected by service centre of the Appellant on 21.4.2001 but no improvement was found even thereafter. The gear box and shaft of power steering were replaced by the

Authorised Dealer''s service centre on 22.5.2001. The power steering and fuel injection pump of the vehicle were also replaced by the Appellant. Respondent sent legal notices dated 13.4.2001, 6.10.2001 and 18.3.2002 to the Appellant with a request to rectify the defects. Appellant did not respond to the notices. Respondent got checked the vehicle from the Government Approved Surveyor who opined that there was a major defect in the Power Steering System. Complainant, being aggrieved, filed the complaint before the State Commission seeking a direction to the Appellant to either replace the car with a new one or in alternative to refund the sum of Rs. 9,06,796 being the price of the vehicle along with interest @ 18% p.a., Rs. 2,00,000 as compensation and Rs. 15,000 as costs.

2. APPELLANT , on being served, put in appearance and filed its written statement resisting the complaint on the grounds that the complaint filed was bad for misjoinder of the necessary parties as the service centres where the vehicle was got repaired, were not made the parties; that the Complainant was not a ''consumer'' as the vehicle was purchased by him to promote his business; that the Appellant had manufactured the vehicle after obtaining the type approval and confirmation of production certificate from ARAI, Pune which is an accredited Research Institute under the Ministry of Industry, Govt. of India; that the defects pointed out by the Respondent were rectified to his satisfaction that there was no deficiency in service on their part. During the pendency of the complaint, the vehicle was sold by the Respondent on 26th August, 2002 for Rs. 5,05,000 without taking the permission of the State Commission.

3. STATE Commission, after considering the facts, pleadings, evidence adduced by the parties, report of the Government Approved Surveyor and various service invoices, held that there was a major defect in the power steering for which the vehicle was sent to the service centres of the Authorised Dealer and the Appellant a number of times but the same could not be rectified. Since the vehicle was sold by the Respondent during the pendency of the complaint, the State Commission directed the Appellant, manufacturer to pay a lump sum compensation of Rs. 2,00,000 to the Respondent in addition to costs of Rs. 10,000.

4. STATE Commission in its order observed as under: 20. In the instant case the vehicle developed defect within less than three months. The power steering of the vehicle was not working properly. Admittedly, it was got checked from the service centre and authorized dealer of the O.P. In spite of having 1300 kms. the defect of the power steering system continued persistently. After having plied 3400 kms. the power steering was found very hard. The complainant took the vehicle to the service centre. There was no sign of improvement in spite of all efforts of the O.P. Again on 22.5.2001, the vehicle was left with the dealer for check up which was admittedly returned after replacement of the gear box and shaft of power steering. In spite of the replacement of the gear box the problem still continued and the complainant was forced to approach the dealer on 12.6.2001, 5.7.2001 and 21.7.2001.

 

21. Having failed in his efforts to get the above defects which were inherent manufacturing nature, the complainant got the same inspected on his own from M/s. A -One Motors, Mathura Road, New Delhi on 19.7.2001 for the problem of low pick up and power steering. When he was going for business trip to Agra on 5.10.2001, the power steering got jammed at Mathura. All these facts were brought to the notice of the OP with the request to take immediate steps to get the defect of the power steering repaired.

23. Aforesaid facts are sufficient to declare the quality of the vehicle defective when tested on the standards of work "defect" as defined by Section 2(1)(d) of the Consumer Protection Act, 1986 which means any fault, imperfection or shortcoming in the quality, quantity, potency, purity, or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the traders in any manner whatsoever in relation to any goods.

Dissatisfied with the order passed by the State Commission both the parties have filed appeals. First Appeal No. 466/08 has been filed by the Complainant seeking enhancement of the compensation whereas the First Appeal No. 483/08 has been filed by the opposite parties for setting aside the impugned order.

5. WE have heard the learned Counsel for the parties at length. Learned Counsel appearing for the Appellant contends that the Respondent had sold the vehicle during the pendency of the complaint for a sum of Rs. 5,05,000 without seeking leave from the State Commission; that in the receipt of sale the Respondent has admitted that the vehicle was in good condition at the time of sale which fact has also been confirmed by the purchaser; that the Consumer Fora cannot come to a finding that the vehicle was suffering from manufacturing defect unless the same was inspected thoroughly by an expert; that the State Commission erred in treating the report of the Survey or as an expert report which was not in conformity with Section 13(b) of the Consumer Protection Act, 1986; that as the Respondent failed to discharge his onus to show any defect in the vehicle, he was not entitled to any compensation.

6. WE find substance in the submissions made by the learned Counsel for the Appellant. Admittedly, during the pendency of the complaint, the vehicle was sold by the Respondent on 26th August, 2002 for Rs. 5,05,000 without taking permission of the State Commission. Since the vehicle was sold, it was never produced as an evidence before the State Commission. Had the vehicle been produced before the State Commission it could have been sent to an expert to submit a report to examine whether there was any manufacturing defect in the vehicle. The vehicle was not examined by any expert. In the absence of any expert report and the laboratory test, the State Commission erred in recording the finding that there was any defect in the vehicle. Onus was on the complainant to prove that there was any manufacturing defect in the vehicle which he failed to discharge. Even otherwise, the vehicle was extensively used by the Respondent for two years and it had covered a distance of more than 48000

 

kms. prior to filing of the complaint before the State Commission. Respondent purchased the vehicle for Rs. 9,06,796 and sold it after two years of the purchase for Rs. 5,05,000. Depreciated value of the vehicle at the time of resale could not have been more than the sale consideration. In our considered opinion, in the absence of material evidence for the alleged loss suffered, the Respondent was not entitled to any compensation. The State Commission erred in awarding compensation of Rs. 2,00,000 to the Respondent in the absence of material evidence of manufacturing defect in the vehicle. All the defects pointed out by the Respondent were rectified by the Appellant to his satisfaction. For the reasons stated above, the First Appeal No. 483/2008 filed by the Tata Engineering and Locomotive Co. Ltd. is allowed, impugned order is set aside and the complaint is dismissed. Consequently, First Appeal No. 466/08 filed by the Complainant for enhancement of the compensation is dismissed. No order as to costs.

7. REGISTRY is directed to refund the sum of Rs. 35,000 deposited by the Appellant as statutory deposit along with accrued interest. If any amount had been paid by the Appellant to the Respondent in compliance of the order of the State Commission, the same shall be refunded by the Respondent to the Appellant within a period of eight weeks.