
(2013) 05 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

SOORAJ AUTOMOBILES LTD.

APPELLANT

Vs

RAJ MOTORS , Shri Bhanwar Lal

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 480 : 2013 3 CPJ 220

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : S.K.SHARMA , S.K.TIWARI

Judgement

1. THIS revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 18.04.2007 passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (hereinafter referred to as "State Commission ") in Appeals No. 363/2003, Bhanwar Lal Vs. Raj Motors and anr. and Appeal No. 612/2003, Raj Motors Vs. Bhanwar Lal and anr. The said appeals had been made before the State Commission against the order dated 03.01.2003 of District Forum, Jaipur, vide which complaint No. 203 of 2000 filed by Bhanwar Lal, the respondent No.1 was partly accepted. The State Commission in appeals, set aside the order of the District Forum and ordered that the complainant was entitled to receive compensation from the present petitioner M/s. Sooraj Automobiles Ltd., which was respondent No.2 in both the appeals before the State Commission. It is against this order that the present petition has been made.

2. THE facts of the case are that the complainant / respondent No.1 Bhanwar Lal purchased one Sitara brand diesel Auto from M/s. Raj Motors, who are dealers of the petitioner and impleaded as respondent No.2 in their petition. The said vehicle is stated to have been purchased on 10.09.1995 and it is alleged that it had some manufacturing defect from the beginning itself. The complainant alleged that when he was taking the vehicle to Kishangarh, some sound and wobbling was detected in the left wheel of the vehicle and he took it to the workshop of M/s. Raj Motors/opposite party No.1, who tried to rectify the defect and handed over the same back to him, saying that in case of any problem, he

could bring it to their workshop again. The vehicle again developed problem within a week and it was brought to the opposite party No.1 once again. They got a complaint written from him in the name of opposite party No.2 and stated that they were sending the complaint to the workshop of opposite party No.2 at Saharanpur, so that a person could be deputed by opposite party No.2 to rectify the defects in the vehicle. Later on, the complainant wrote many letters to the opposite parties, but without any effect. The complainant got a letter dated 03.02.1996 from opposite party No.2, in which it was stated that the period of warranty of three months after the purchase of the vehicle had already lapsed, but even then the complainant could bring his vehicle for repairs, but at the premises of M/s. Prem Motors, Bharatpur and not at Saharanpur. The complainant filed the consumer complaint in question before the District Forum and the District Forum, vide order dated 03.01.2003 directed respondent No.2/ opposite party No.1 to pay a sum of Rs.1,02,973/- within one month to the complainant and also stated that if the order was not complied with, the complainant will be entitled to receive interest thereon. The petitioner/opposite party No. 2 was also directed to pay a sum of Rs.5,000/- to the complainant within one month failing which interest will be chargeable. Two appeals were filed against the order of the District Forum before the State Commission -- one by the complainant requesting that he must be awarded compensation against the petitioner/opposite party No.2 as well and the second was preferred by the dealer/opposite party No.1 M/s. Raj Motors, saying that there was no deficiency in service on their part and the compensation should be awarded against the petitioner/opposite party No.2. The learned State Commission, vide impugned order dated 18.04.2007 held that the complainant was entitled to receive the sum of Rs. 1,02,973/- from the present petitioner along with interest on the said amount @ 12% from 03.01.2003 and also Rs. 2,000/- as cost of litigation. It is against this order that the present petition has been made. The complainant / respondent No.1 appeared before this Commission on some hearings and also filed a reply dated 19.08.2008 which is on record. However, the complainant stated on 03.08.2012 that he was unable to meet the expenses of appearing from time to time and requested to decide the matter on merits. The respondent No.2 M/s. Raj Motors did not appear even after publication in the newspapers and was ordered to be proceeded against ex-parte. At the time of hearing before us, the learned counsel for the petitioner stated that the petitioner-M/s. Sooraj Automobiles Ltd. was engaged in manufacturing of the chassis of the vehicles in question and sell the same to the respective dealers, who fabricate the bodies of the vehicles on such chassis and sell them to the consumers. The learned counsel has drawn our attention to the facts of the case, stating that the primary responsibility for removing the defects or for giving compensation was that of the dealer i.e. respondent No.2, M/s. Raj Motors who had not put in appearance purposely, even before the District Forum. On the part of the petitioner, they had made a commitment vide letter dated 03.02.1996 that although, the period of warranty had expired, even then they were prepared to repair the vehicle; provided the same was brought to the premises of M/s. Prem Motors, Bharatpur.

The learned counsel further stated that the chassis of the vehicle had been sold for a sum of Rs. 74,993/- on 30.06.1995 to the dealer M/s. Raj Motors. The prototype of these vehicles had been given a certificate of roadworthiness by the Automotive Research Association of India (ARAI). It was therefore, not proper to say that the petitioner had made any deficiency in service. The learned counsel also invited our attention to an affidavit filed by the petitioner before the District Forum in which it has been stated that there was contradiction in the version of the complainant as stated in the complaint itself. At one place, the complainant had stated that the delivery of the vehicle had been taken on 05.09.1995 and after delivery it was being taken to Kishangarh, when it developed trouble. At other place, it has been mentioned that the delivery, was taken on 10.09.1995 for the first time. The learned counsel maintained that no opinion from any expert had been brought on record which could substantiate the allegations of the complainant. He has drawn our attention to the judgment given by the National Commission in the TATA Engineering and Locomotive Company Limited and Anr. versus Sunil Bhasin and Anr., as reported in 2008 NCJ 350 (NC). The learned counsel requested that the order of the State Commission should be set aside.

3. THE arguments in this case were heard on 30.04.2013 and the order was kept reserved. However, after examination of the file, it was decided to seek clarification on some issues and the case was again heard on 30.05.2013. The learned counsel for the petitioner stated during arguments on 30.05.2013 that there was no evidence of any manufacturing defect in the vehicle and, hence, no liability could be imposed upon the petitioner to provide any compensation etc. However, they were prepared to replace minor parts in the vehicle as a gesture of goodwill, if it was brought to M/s. Prem Motors, Bharatpur. Learned counsel clarified that since the vehicle had become very old, it may not be possible to repair the vehicle, but still they were prepared to replace the minor parts, if the vehicle was brought to them.

4. THE complainant/respondent no. 1 did not appear before the Commission on subsequent hearings after 03.08.12. However, he has stated in his reply dated 19.08.2008 to the revision petition that he suffered both mentally and economically, because of technical defects in the vehicle and hence, the order passed by the State Commission deserves to be maintained. We have carefully examined the facts on record and given a thoughtful consideration to the arguments advanced before us. It is quite clear from the factual matrix of the case that the vehicle had been sold to the complainant after fabricating the body by respondent no. 2, M/s. Raj Motors on the chassis supplied to them by the petitioner. The petitioner have stated that the chassis was sold to M/s. Raj Motors for a sum of Rs.74,993/-. They did not put in appearance before this Commission and also before the State Commission and it is being stated that they had closed their business. The petitioner has maintained categorically that no manufacturing defect had been pointed out in the complaint. As stated by the complainant, there was wobbling and sound from the wheel, and it was the duty of the dealer

to remove the defects, because the defects had been reported to the dealer within the period of warranty. The petitioner has also stated that they had given an offer vide their letter dated 03.02.1996 that although the period of warranty had expired; even then they were prepared to repair the vehicle, provided the same was brought to the premises of M/s. Prem Motors, Bharatpur. The petitioner has offered even now that if the vehicle is brought to them, they are prepared to replace the minor parts of the vehicle, but not engine etc. From the entire factual position on record, it is clear that deficiency in service on the part of the petitioner cannot be established in the strict sense. However, looking at the facts and circumstances of the case, it would be appropriate that the complainant brings the vehicle for repair to the premises indicated by the petitioner within two months from the date of order and the petitioner should try to remove the defects in the vehicle by replacement of minor parts, as promised by them. For meeting the expenses for bringing the vehicle to Bharatpur and taking it back, a sum of Rs.5,000/- may be allowed to the complainant payable by the petitioner. However, if the complainant, in his wisdom, does not want to exercise this option, he may be given compensation to be shared equally by the petitioner and respondent no. 2, M/s. Raj Motors. The vehicle was purchased in the year 1995 and the natural presumption is that it must have been used by the complainant, because he has not stated otherwise, in his reply to the revision petition or other documents anywhere. Under these circumstances, it shall be appropriate if a sum of Rs.40,000/- in lump-sum is paid to the complainant to be shared equally by the petitioner and the respondent no. 2, M/s. Raj Motors. It is stated again that it shall be open to the complainant to exercise either of the two options as stated above. The revision petition is, therefore, disposed off accordingly and the order passed by the State Commission is modified as stated above.