(1999) 04 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

S.S.TIWARI APPELLANT

Vs

REGIONAL MANAGER (SALES), HINDUSTAN MOTORS RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Citation : 2000 2 CPJ 63

Hon'ble Judges : S.K.Parthasarathy J.

Final Decision : C.A. dismissed

Judgement

1. THIS order disposes of the application filed by Shri S.S. Tiwari, New Delhi under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act) seeking compensation from the respondents, viz., the Hindustan Motors and Rajiv Motors, New Delhi on the ground that the latter indulged in unfair trade practices falling within the definition of Sections 36A(i), (iv) and (vi) of the Act.

2. THE brief facts of the case as alleged in the compensation application may be recalled. THE applicant purchased a Car GLX Model from respondent No. 2 for Rs. 4,28,368/- on 31.6.1996. After purchasing -the car the applicant noticed that the car did not have the GLX Logo but instead it had GL Logo. It was also noticed that the car was not fitted with Bridgestone Radial Tyres which was one of the features of the GLX model. THE car also did not have cannister system fitted into it. It did not have the dash board pocket light. THE respondents also issued warranty certificate of GL model and not GLX model. THE applicant has claimed as compensation the difference between the price of GLX model and the GL model. The respondents filed replies to the compensation application denying the allegations and stating that the applicant was sold GLX model car and the correct price was recovered from him. After the pleadings were complete, the following issues were framed : (1) Whether the respondents have been or are indulging in the restrictive/ unfair trade practices alleged in the application ? (2) If so, whether such restrictive/unfair trade practices are prejudicial to public interest or affecting the interest of any consumer or consumers generally? (3) Whether any

loss or damage has been caused to the applicant due to the above practices and whether the applicant is entitled for are compensation ? (4) Relief.

The Advocate for the applicant stated that the case could be decided on the basis of affidavit of evidence filed by the applicant and the counter affidavit of the respondent Accordingly, the affidavit of evidence was filed, by the applicant in which the applicant had stated that he had come across publicity given by the respondents relating to the new GLX Model of Contessa Car claiming many benefits. However, he did not annex any advertisement or publicity material either with the original compensation application or with the affidavit stating that the publicity material would be available with the respondents. In the affidavit the applicant has pointed out that the warrant- certificate, the hand book in respect of the issued to him with certificates, voucher book supplementary hand book pertaining to catalogue converter given to him subsequent to the purchase of car all related to GL model.

3. IN the counter affidavit of evidence by the respondent No. 1, the following have beer averred : (1) As per the market practice and the practice followed by the automobile industry, whenever there is a upgradation for a model of the car, the sale of the new model takes place and a formal launch of a new model is undertaken subsequently looking at the response received as well as research by the Marketing Department. IN this particular case the formal launch of the new model GLX started only in the month of June, 1996 after the car was sold to the applicant.

(2) As per the advertisement released by the respondent in June, 1996 the respondent claimed certain features of the new model like powerful air conditioning, luxurious PU sets, new improved wishbone suspension and powerful steering. All these features were present in the car in question sold to the applicant.

(3) The cannister system was made mandatory by the Government to be fitted into the cars from 1st April, 1996 by which time the particular car purchased by the applicant had been despatched from the factory.

(4) The engine and the chassis number of the car supplied to the applicant are in conformity with GLX car model. The applicant''s claim was based solely on the ground that the car delivered to him was not fitted with GLX logo for which no proof has been adduced. The applicant has failed to indicate what features of the new GLX are missing from the car given to him.

(5) The terms of warranty for both GL and GLX models are same. It was possible that since the warranty card in respect of GLX was not available with the dealer, the warranty pertaining to the GL model was handed over to the applicant which in any case would not make any difference as far as the terms and conditions of the warranty were concerned. (6) The price of the car for GLX as on the date of purchase was correctly charged from the applicant.

The respondent No. 2 had also filed a counter affidavit of evidence in which it had pointed out that the car sold to the applicant was fitted with Goodyear Tyres as provided by the manufacturer and Bridgestone Radial Tyre was not a feature of GLX model. The supply of tyres or a particular make depends upon the supply of the manufacturer and did not in any way determine the model of the car. It has also been pointed out in the affidavit that there was no requirement that the car sold to the applicant was to be fitted with cannister filter system. Such system was being supplied in the vehicle by the manufacturer much after the purchase of the car by the applicant. Similarly, there was no requirement that the GLX model was to be fitted with dash board pocket light. The respondents had not issued any advertisement for GLX model of the car prior to the date of purchase of the car by the applicant. In the counter affidavit the respondent No. 2 has also stated that the car purchased by the applicant was fitted with GLX logo.

4. I gave a hearing to Mr. N.R. Samy, Advocate for the applicant, Mr. Neeraj Sharma, Advocate for R-l and Mr. K. Sunil, Advocate for R-2. I have very carefully gone through the records of the case. My answers to issue No. 1 which was framed and which was referred to earlier in this order is in the negative and, therefore, there is no need to answer the other issues. My reasons for coming to the above conclusions are discussed below : The applicant has levelled the charges against the respondent in terms of the provisions of Section 36A(i), (iv) and (vi) of the Act. They all related to false or misleading representation. The applicant has failed to cite any advertisement or publicity material based on which he purchased the car in question. To establish that there was a misrepresentation on the part of the respondents the applicant has not adduced any evidence except has merely stated that such publicity material was available with the respondents. The respondent No. 1 has explained that the first advertisement relating to GLX model of the car was issued after the car was sold to the applicant on.as there is always a time lag between the formal launching of the model and the commencement for the sale of the model. Even otherwise the respondents have reiterated that all the features of the GLX model as indicated in the advertisement were available in the car which was sold to the applicant. The applicant has pointed out in the original compensation application and not in the affidavit of evidence filed latter that the car sold to him did not have Bridgestone Radial Tyres, Dashboard pocket light and the cannister filter system. According to respondent No. 2 the tyres are fitted to the car by the manufacturer and the car was sold to the applicant with the original tyres as supplied by the manufacturer. In any case there had been no representation of the respondents that the car would be fitted with Bridgestone Radial Tyre. Similar is the situation with regard to Dashboard pocket light. The respondents have explained that the cannister filter system was fitted to the cars only with effect from 1,4.1996 when this was made mandatory by the Government and the car sold to the applicant had been despatched from the factory prior to this date. In any case, there had been no representation that the GLX model of the car should be fitted with cannister filter

system. In view of what is stated above, the applicant''s case revolves around only his. statement that the car supplied to him did not bear GLX logo and had a GL logo and the warranty card certificate and the hand books supplied to him and subsequent to the sale of the car also related to GL models. As against the denial of the respondents that the car was not fitted with GLX logo there is only the statement of the applicant to this effect and the applicant has not adduced any evidence during the enquiry to prove his contention. The applicant chose to get the case adjudicated on the basis of his affidavit and counter affidavits filed. While the absence of GLX logo on the card by itself would not be sufficient proof to prove the charges levelled against the respondents, the statement of the applicant that the card did not have GLX logo in the face of the denial on affidavit by the respondents cannot be taken into account. The respondent No. 1 has explained that the warranty certificates in respect of the GLX model and GL model are substantially the same. I find that the warranty certificate produced by the applicant as an evidence in his affidavit gives the Chassis No. and the Engine No. which corresponds with Chassis No. and the Engine No. which was actually sold to the applicant by the respondent No. 2. It is not the case of the applicant that because of the issue of warranty certificate in respect of the car purchased by him in the form which relates to GL model there has been deficiency in service on the part of the respondents executing the warranty. Under the circumstances, the issue of the warranty certificate in the present form to the applicant which relates to GLX model does not prove any charge relating to Sections 36A(i), (ii), (vi) of the Act. The applicant''s reliance on this piece of evidence to show that the car sold to him was not GLX model has no force. It is not possible to come to this conclusion in the face of evidence to show that the car which was sold to the applicant had all the features of a GLX model. I am, therefore, of the view that the applicant had failed to establish that the respondents had indulged in unfair trade and that the applicant has suffered any loss or damage. There is thus no question of examining whether the applicant is entitled for any compensation under Section 12B of the Act. In view of what is stated above, the compensation application filed by the applicant fails and is, therefore, rejected. C.A. dismissed.

