

(2009) 02 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Sundeeep Polymers Private Limited And Anr.

APPELLANT

Vs

MERCEDES BENZ INDIA LIMITED

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Citation : 2009 3 CPJ 389

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Advocate : M.N.KRISHNAMANI , S.PANI , D.P.MOHANTY , M.S.PANDIT ,
R.R.HANDA , Vipin Sehgal

Judgement

1. COMPLAINT was filed alleging that complainant No. 1 - Co. whose complainant No. 2 is the Managing Director, pursuant to the quotation dated 27.6.1998 sent by opposite party No. 2, booked a Mercedes Benz Car on 30.6.1998 and paid the booking amount of Rs. 1.00 lakh. Delivery of the car was taken on 30.7.1998 after paying amount of Rs. 25,56,391 as the price of the car plus registration fee of Rs. 2,57,496 and insurance premium of Rs. 29,046, totalling Rs. 28,42,933. Out of this amount, complainant No. 1 made payment of Rs. 5,42,933 and balance amount of Rs. 23.00 lakh was financed by opposite party No. 3. Car was purchased for the use of complainant No. 2 being Managing Director of complainant No. 1 -Co. It was alleged that on 24.5.1999 complainant No. 2 along with his elder son started from Mumbai for Pune by the car in question which was allotted registration No. MH -01 -V -5848. While climbing Khandala Ghats, the clutch pedal of the car collapsed and sank right inside and the car stopped. After some time the clutch responded and complainant No. 2 drove the car for a short distance. Clutch plate again collapsed. After the clutch responded the complainant No. 2 slowly drove the car to the factory of opposite party No. 1 at Pune. Car was left at their factory. After repairs the car was given back to complainant No. 2 with the assurance that the problem was corrected. It was stated that on 16.8.1999, complainant No. 2 gave the car for service to opposite party No. 2. Complainant No. 2 himself met Shri Solanki of opposite party No. 2 and discussed the problem of clutch failure. Shri Solanki assured complainant No. 2 that the clutch failure problem will not be repeated. It was pleaded that on

30.1.2000, complainant No. 2 along with his wife and two sons travelled from Mumbai to Lonavalla in the car. Clutch pedal again collapsed. Somehow the complainant No. 2 managed to reach Khandala. Wife of complainant No. 2 called up the service centre of opposite party No. 2 and asked the centre to send a serviceman and/or an alternate vehicle. Arun Kumar of opposite party No. 2, however, informed that no assistance will be available till Monday. Complainant No. 2 had no alternative but to drive the car very slowly to Mumbai. On reaching Mumbai, the car was parked in the garage. By then the car had run approximately 3100 kms. There is reference to the correspondence dated 31.1.2000, 1.2.2000, 14.2.2000, 5.2.2000, 21.2.2000, 25.2.2000, 3.3.2000, 15.3.2000, 21.3.2000, 22.3.2000, 29.3.2000, 1.4.2000, 19.4.2000, 12.5.2000, 5.7.2000 and 11.7.2000 exchanged between the parties. Claiming manufacturing defect in the car, direction was sought to be issued to the opposite parties to replace the car with a new car or, in alternative, to refund the price paid with interest, pay Rs. 50.00 lakh and Rs. 2.00 crores as compensation for harassment and mental agony, etc., pay Rs. 25,000 p.m. towards expenses incurred by the complainant from February, 2000 till November, 2000, pay Rs. 20,000 p.m. towards garage charges, etc. from February, 2000 till November, 2000. Direction was also sought to be made to opposite party No. 3 to recover the remaining monthly instalment amount from opposite party Nos. 1 and 2.

2. ORDER dated 30.1.2003 notices that by the order dated 28.11.2001 on the statement made by the Counsel of complainants prayers (c) regarding direction to opposite party No. 3 to recover the remaining monthly instalments from opposite party Nos. 1 and 2 and (e) pertaining to award of Rs. 2.00 crores by way of compensation for mental agony were deleted. In the amended complaint, both the said reliefs and the name of opposite party No. 3 -Tata Motors Finance Ltd. -financier have been deleted.

3. ONLY opposite party No. 1 filed the written version. By way of preliminary objections, it was alleged that complainants are not the consumer" because the car was purchased by complainant No. 1, who is engaged in commercial activities. Use of the car by complainant No. 2 being Managing Director of complainant No. 1 tantamounts to use of the car by the Company. On merit, it was stated that the complainants allege that in two separate incidents on 24.5.1999 and 30.1.2000 the clutch pedal of the car collapsed and sank inside. Clutch failure was highly uncommon. Complainants were, therefore, asked to produce the car vide letters dated 25.2.2000, 3.3.2000, 21.3.2000, 10.4.2000 and 19.4.2000 at the work shop of the authorized dealer to enable the opposite party's Technical Specialist to conduct thorough examination and, if necessary, to repair/ replace the parts. Complainants refused to cooperate and did not produce the car either after the alleged first or second incident. Car, thus, could not be examined/ attended to by the opposite party. It was stated that the cars manufactured by the answering opposite party are world class cars with a high reputation for safety, comfort, quality and standard. It was pleaded that the allegations made in para No. 5 of the complainant in regard to the clutch pedal of

the car having collapsed on 24.5.1999 is in -consistent with the complainant's letter dated 31.1.2000 addressed to Ziegler, Managing Director of the answering opposite party and the letter dated 21.2.2000 addressed to Prof. Hubbert of Daimler Chrysler AG, Germany. Upon verification of the record it appears that the complainants did not bring the car to the opposite party/its authorized dealer with alleged problem either in the month of May, 1999 or July, 1999 as alleged. It was stated that the opposite party is unable to comment on the version of the complaints made in para 8 wherein discussion which the complainant No. 2 had with a past employee of opposite party No. 2 -dealer in Mumbai was narrated. It was denied that the complainants are entitled to the reliefs claimed. We have heard Mr. M.N. Krishnamani for the complainants, Mr. M.S. Pandit for opposite party No. 1 and Mr. R.R. Handa for opposite party Nos. 2.

4. BURDEN to prove that the car in question was having inherent manufacturing defect and the incidents dated 24.5.1999 and 30.1.2000 occurred, is on the complainants. Order dated 21.10.2000 notices that it was agreed that opposite party No. 1 will collect the car by 12.1.2002 from the complainants and attend to the problems relating to the clutch and return the car within three weeks. Order dated 14.1.2003 which came to be passed on miscellaneous application No. 282 of 2002, says that it was agreed between the parties that the car which is presently with the complainants will be towed to the workshop of opposite party No. 1 at Pune at the cost of opposite party No. 1 and the representatives of the parties will remain present at the time of the joint inspection of the car. Car was inspected on 4.2.2003 in the presence of J. Balasubramanian, representative of the complainants and Lino Marques of opposite party No. 1 and it was noticed - (i) Horn not working, (ii) left front door mirror noisy, (iii) driver side door mirror bent, (iv) maintenance service to be done, (v) excess engine oil level, (vi) noises from all windows, (vii) battery dead, (viii) engine not starting, (ix) fuel system need to be cleaned, (x) fuel tank need to be checked for corrosion, (xi) fuel pump not working, (xii) A/c gas less measures 7 ban. against 10 ban. Gas needs to be filled, (xiii) HHT shows fault codes, may be wire cut by rats and (xiv) the brake discs are corroded and need to be replaced.

5. AFTER joint inspection of the car a letter dated 4.1.2003 was sent by opposite party No. 1 to complainant No. 2 and it being material, omitting immaterial portion, reads thus: "In terms of the order dated 14.1.2003, we acknowledge receipt of your Mercedes -Benz car, Model E 200, bearing Registration No. MH -01 V -5848 and Chassis No. WDB 210 035 6A 564933.

Subsequent to its receipt on 4.2.2003, preliminary inspection was carried out on the above vehicle at 11.30 hours at our premises. The following observations were recorded and the related consequential/ other aspects may arise while rectifying these - 1. Battery is totally flat -has no electrical charge.

2. Even after replacing the battery with another working battery, the engine cranks, but does not start. 3 The under chassis was inhabited by the left -overs of food materials and the establishment of residence place by rats and rodents.

They may have eaten away the wires and electrical cables, thus leading to electrical malfunctions. The exact extent of damage needs further investigation.

4. As stated by your goodself, the vehicle is not used for nearly two years, and therefore, various systems such as fuel, A/c are affected. In order to start the vehicle, the above systems and the electrical faults need to be corrected. 5. The brake discs are corroded and need to be replaced. In view of the above observations, the vehicle could not be driven and checked for its clutch function. The same will be possible only after restoration of the vehicle of the operational condition. The above observations have been jointly recorded with your representative Mr. G. Balasubramanian and the related copies are attached herewith for your kind perusal."

6. LETTERS dated 1.2.2000 (copy at page 37), 15.2.2000 (copy at page 42), 3.3.2000 (copy at page 47), 21.3.2000 (copy at page 52) and 19.4.2000 (copy at page 58) would show that complainant No. 2 was asked to arrange to send the car at opposite party No. 2's workshop for inspection by the Sr. Technical Specialist and attend to the complaint related to clutch. Car was, however, not made available to opposite party No. 2 by complainant No. 2 who insisted for replacement thereof. As may be seen from the said joint inspection report dated 4.2.2003 the car had suffered damages indicated therein due to lack of maintenance for which the complainants themselves are to be blamed. Since the complainants even did not offer to bring the car to operational condition, to check its clutch function after driving it, the alleged complaint of clutch failure could not be checked by opposite party Nos. 1 and 2 pursuant to aforesaid orders dated 21.10.2002 and 14.1.2003 passed by the Commission. At this juncture, it will not be out of place to mention that in the complaint two episodes of clutch failure are stated to have occurred on 24.5.1999 and 30.1.2000. Copy of the letter dated 31.1.2000 sent by complainant No. 2 to Shri Ziegler, Managing Director of complainant No. 1 - Co. is placed at page No. 33 while that of letter dated 21.2.2000 sent to Prof. Hubbert of Daimler Chrysler AG, Germany is at page No. 42. Both these letters are conspicuously silent in regard to alleged clutch failure incident dated 24.5.1999. Both these letters pertain to clutch failures occurring in July, 1999 and 30.1.2000. However, in the complaint the incident occurring in the month of July, 1999 is not even pleaded. Warranty of one year had expired by 30.1.2000, the car having been purchased on 30.7.1998. Considering the said omission and complaint of clutch failure not having been checked up after driving the car because of the failure of complaints to make the car operational the bald allegation made by the complainants in regard to failure of clutch pedal cannot be believed. It is not proved that the car was having inherent manufacturing defect as alleged.

7. THAT apart, in arbitration case No. 494 of 2001 initiated by Tata Finance Ltd. financier, an award was passed against the complainants on 8.7.2002. Pending award, an order of attachment of the car was made on 17.10.2001 and after attachment the car was given on superdari of the complainants. Attachment of

the car and passing of the award which were not within the knowledge of opposite party No. 1, were suppressed by the complainants at the time of passing of aforesaid two orders dated 21.10.2002 and 14.1.2003. It is not in dispute that in execution proceedings vide order dated 21.6.2004 the Bombay High Court had restrained opposite party No. 1 from handing over possession of the car to the complainants until further orders. Vide order dated 1.7.2004, the High Court made the order that the Court receiver should take possession of the car from opposite party No. 2 and opposite party No. 1 was directed to cooperate with the receiver in taking possession of the car. Pursuant to this order, the Court receiver had taken possession of the car from opposite party No. 2 on 24.11.2004. Car is, thus, not with the complainants. Prayer for refund of purchase price and/ or replacement of the car can be granted only subject to return of the car by the complainants to opposite party No. 1. On being confronted with this change in circumstances Shri Krishnamani for the complainants submitted that complainants are still entitled to compensation. However, no satisfactory evidence has been adduced by the complainants with regard to compensation in such an eventuality. At any rate in view of the complainants having not established that the car was having inherent manufacturing defect or its clutch pedal collapsed as alleged, the complainants are not entitled to any compensation whatsoever.

8. FOR the foregoing discussion, the complaint is dismissed being without any merit with cost of Rs. 15,000 to opposite party No. 1.