(2016) 07 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Case No : 445 of 2016

TAPAN POLEY — APPELLANT

Vs

SHREE AUTOMOBILES PVT. LTD. & ANR. — RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Consumer Protection Act, 1986, Section 2(1)(d), Section 2(1)(d) - Definitions - Definitions

Citation : 2016 3 CPR 19

Hon'ble Judges : S.M. Kantikar

Advocate : Pawan Kumar Ray, Barun Prasad

Judgement

1. The short question involved in this revision petition is that the complainant, Shri Tapan Poley purchased a Xylo Luxury Car from Shree Automobiles Pvt. Ltd., the OP1 on 31-08-2012. The OP issued invoice and insurance cover for the same. The complainant paid Rs.87,500/- to the agent of OP1 for payment of life time road tax but the OP paid the tax at very later stage and

issued the tax token very late despite repeated requests and after receiving the entire payment. Therefore, the complainant approached the Howrah District Consumer Disputes Redressal Forum (for short, the District Forum).

2. The District Forum allowed the complaint and ordered to handover the necessary documents to the complainant within 15 days from the date of order otherwise Rs.50/- per day shall be imposed upon them till actual compliance. The District Forum awarded compensation of Rs.1,00,000/- to the complainant.

3. Aggrieved by this order the OP filed first appeal before the West Bengal State Consumer Disputes Redressal Commission (for short, the State Commission) which was allowed on the ground that the complainant is a businessman and cannot be termed as consumer and consequently dismissed the complaint.

4. Hence, this revision petition.

5. I heard the counsel for the both the parties. The counsel for the petitioner vehemently argued that vehicle in question was purchased on the basis of brochure and he brought my attention to the pricelist effective from 04-09-2012 under which the lifetime tax for 15 years was Rs.87,395/- which was paid by the complainant but the OP paid one-time tax for 5 years i.e. Rs.49,250/- which was never opted by the complainant. The counsel further submitted that the complainant put his signature on some blank documents. Some were subsequently filled by the OP which was not in the knowledge of the complainant. He brought our attention to the application form for option for payment of life time tax/one-time tax which revealed tick mark () on the one-time tax.

6. The rival arguments on behalf of the counsel for the OP are that the complainant was not a consumer under Section 2(1) (d) of the Consumer Protection Act. The car was used for his business purpose for the private use as a commercial use. Therefore, he is not a consumer.

7. It is pertinent to note that the complainant is a businessman in the style of M/s. Srikrishna Manufacturing Company. No doubt he is using this vehicle for his personal use to gain more from the business, thus it is for his livelihood. Hence, he is consumer under Section 2(1)(d) of this act. The act of OP was a deficiency in service. Therefore, the complainant was deprived of driving the vehicle for some period due to non-delivery of the tax token. It clearly appears that the OP withhold the balance amount of Rs.39,501/- without any valid reason. He should have refunded it immediately. It clearly indicates malifide intention of the OP. Therefore, the OP is held liable for the deficiency in service.

8. Perused the documents on the file, the gazette from Kolkata regarding life time tax or one-time tax on motor cars and omnibus. The complainant''s vehicle falls under Motor Cars and Omnibus (type C) more than 1590 CC but within 2000 CC and the rate of life time tax is 10% of the value of the vehicle or Rs.80,000/- whichever is higher. Therefore, in my opinion, the complainant paid the correct tax amount of Rs.87,000/- but the OP did not remit the entire amount to RTO but remitted the one-time tax only for five years.

9. On the basis of foregoing discussion, it is thus clear that the complainant is a consumer. Accordingly, the order of the State Commission is set aside. Further, in my view, the District Forum has awarded compensation of Rs.1,00,000/- which is on higher side. Therefore, I modify the order of the District Forum and direct the OP to refund the excess amount of Rs.39,501/- and compensation of Rs.50,000/- to the complainant for the mental agony and loss of his business. The revision petition is partly allowed. There shall be no order as to costs.

