

(2008) 03 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

TVs Motor Company Limited

APPELLANT

Vs

VIJAY KUMAR

RESPONDENT

Date of Decision : 05-03-2008

Acts Referred:

Citation : 2008 2 CPJ 468

Hon'ble Judges : Neerja Singh , J.P.Vyas J.

Final Decision : Appeal partly allowed

Judgement

1. -THIS an as appeal by opposite parties under Section 15 of the Consumer Protection Act, 1986 against order dated 21. 2. 2006 passed in C. C. No. 37/2003 by the District Consumer Disputes Redressal Forum, Narsinghpur (for short "forum").

2. THE facts of the case in brief are that the complainant (respondent here) had purchased a TVS Victor Motor-cycle bearing registration No. MP-49 B-7755; manufactured by opposite party No. 2 (appellant No. 1 here) from opposite party No. 1 (appellant No. 2 here), on 19. 9. 2002 for Rs. 45,000. The vehicle has a warranty of two years. It is alleged by the complainant that the vehicle gave problems from the very beginning and despite complaints to the opposite party and servicing as per manual, certain defects noticed in the vehicle were not rectified. He, therefore, filed a complaint under Section 12 of the Consumer Protection Act before the Forum on 5. 8. 2003 requesting for direction to the opposite party for returning to him Rs. 45,000 with 18% interest and taking back the vehicle and paying Rs. 30,000 as compensation for the mental torture caused and cost. In its reply before the Forum, the opposite party denied that the vehicle had any manufacturing defects and stated that whenever the vehicle was brought to them, the alleged defects in the vehicle were attended to the satisfaction of the complainant. It was further stated that the vehicle had covered a distance of 25396 kms during 11 months of the purchase which showed that it was giving good service and had no manufacturing defects. After hearing both the parties, the learned Forum came to the finding that the vehicle

did have defects which were not rectified despite frequent repairs and accordingly vide impugned order directed the opposite party to return the depreciated value of the vehicle @ 10% per year amounting to Rs. 29,250 to the complainant after taking the vehicle in question from him with 6% interest thereon w. e. f. the date of the order and to pay Rs. 750 as costs to him.

The learned Counsel for appellant was heard. None appeared for respondent on the date of final hearing. However, the written arguments submitted on behalf of the respondent earlier and the documents on record were perused.

3. IT was contended by learned Counsel for appellants that till 4th servicing in April 2003, no defects were alleged by the respondent and that no expert opinion was brought before the Forum to prove that the vehicle had any manufacturing defects. Perusal of the job-cards would show that during the earlier three servicing on 1. 10. 2002, 23. 11. 2002 and 21. 1. 2003 only routine general complaints were mentioned which were duly attended to. It was only on 17. 4. 2003 and thereafter that problems relating to low mileage, vehicle/handle noise, overheating, low load carrying capacity, etc. were reported. Although the appellants claim to have rectified them whenever they were brought to their notice, the fact remains that these and related problems are persisting and that is how the complainant came before the Forum. Whether these problems were noticed because of manufacturing defects in some parts of the engine of the vehicle cannot be said with certainty. Even Balram Patel, owner of a motor-cycle garage, who swore on affidavit on behalf of the respondent does not specify which part of the engine has what kind of manufacturing defect. He has only casually observed that the motor-cycle is incapable of being repaired because of some manufacturing defect. Obviously, this is not enough, in view of the fact that the vehicle could cover 25396 km during first 11 months of purchase, to come to a finding that the vehicle has some manufacturing defect. Given the fact that the vehicle was purchased on 19. 9. 2002 and that it is being used uninterruptedly, although with some persisting problems, we are of the view that it would be in the fitness of things to make a last attempt for rectification of the alleged problem/defects under the supervision of some independent agency, and to verify if they can be attributed to manufacturing defects of some parts and if so, which ones.

4. THE appeal is therefore partly allowed and it is directed that firstly on respondent bringing the vehicle to the garage of the appellants, the latter shall get the same thoroughly checked and overhauled under the supervision of a trained mechanic of the appellant company and got the said problems/defects noticed, if any, rectified free of cost. Thereafter the Forum shall get the vehicle checked by an independent garage or an authorized mechanic of some other reputed company and on being certified to be defect-free, the vehicle should be returned to the respondent without any more liability falling on the appellants. However, as a result of this exercise if the alleged defects are not rectified to the satisfaction of the respondent, the appellants shall be severally and jointly liable

to return the amount of depreciated value of the vehicle on the date of this order. Since the vehicle is presumed to be in possession and use of the respondent in absence of any evidence to the contrary, following the formula of 10% depreciation per year as determined by the learned Forum, the depreciated value of the vehicle on the date of this order is calculated to Rs. 20,250, by deducting amount of total depreciation at the rate of 5. 5%, given the fact that the vehicle has been used for nearly five and half years. The impugned order of the learned Forum shall stand modified as above. No order as to the costs. Appeal partly allowed.