

(2014) 02 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Tata Motors Ltd. And Anr.

APPELLANT

Vs

Dr. Anuj Paul Maini And Ors.

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Citation : (2014) 02 NCDRC CK 0010

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition dismissed

Judgement

1. THIS judgment shall decide two revision petitions which arise from the same common judgment, dated 28.2.2012 by the State Commission. Dr. Anuj Paul Maini, the complainant, purchased a Tata Indigo Marina Dicor, manufactured by Tata Motors, O.P. 1, through, its Dealer, Garyson Motors Pvt. Ltd., O.P. 2, for a sum of Rs. 6,10,000, on 13 -18.4.2007, with a warranty of one year. The above said vehicle was found to have some major latent defects and did not give any proper service from the day One, and it was taken to the Service Station, time and again. The said vehicle was delivered on 18.4.2007. Even on 16.4.2007, before issuance of Invoice, on a local ride, it developed one snag or the other. It also transpired that the vehicle had following defects: 1. The windshield wiper.

2.DOOR locks were not working properly.

3.Ac Cooling was insufficient.

4. WATER was dripping inside due to which carpet got soaked with water.

5.THE wires of music system got short circuit quite often.

6.Engine gave high level screeching noise.

7.DOOR glasses were rattling.

8.DIESEL was leaking.

9.This is an inadmissible fact that those defects were removed and various parts

were changed without charging any amount. The complainant had obtained insurance from Oriental Insurance Co. Ltd., O.P. 4.

2. ON 20.11.2007, while the complainant was going to Sriganga Nagar from Ludhiana, an accident took place with the vehicle near Mullanpur, as a dead animal was lying on the road and when the complainant turned the steering towards the right, it got stuck and resultantly, the vehicle went towards the left side and landed in the deep trench. It stopped after trouncing fourth tree, crossing over three small trees, and consequently, the vehicle got damaged. The matter was reported to Insurance Company/O.P. 4. It is alleged that no Surveyor was appointed. However, the evidence goes to show that O.P. 4 has already paid a sum of Rs. 1,50,000.

3. ON 28.1.2014, we passed the following orders:

Arguments heard. Reserved for orders.

Learned Counsel for the Insurance Company submits that the Insurance Company has already paid an amount of Rs. 1,50,702 in favour of Garyson Motors Private Limited, which has repaired the vehicle. There lies no bar in getting the vehicle from the Garyson Motors Pvt. Limited to the complainant.

4. THE District Forum in its order, dated 2.3.2010, ordered that Tata Motors, O.P. 1 and Garyson Motors, O.P. 2, would replace the car of the complainant with a new one, within a period of 45 days of receipt of the said order. PW -2 was ordered to pay compensation of Rs. 20,000.

5. AGGRIEVED by that order, Tata Motors Ltd., filed two separate appeals before the State Commission. The State Commission, vide its order dated 28.2.2012, partly allowed the appeals. It modified the order of the District Forum that, in place of replacement of the vehicle with a new one, Ops. 1 and 2 shall pay Rs. 3,00,000, jointly and severally, to the extent of Rs. 1,50,000 each, to the complainant. O.P. 2 was further directed to handover the bill for repairs and other necessary bills to the Appellant, Tata Motors Ltd., and Insurance Company/O.P. 4, would accordingly disburse the amount of insurance, directly to the respondent No. 2, and in turn, the respondent No. 2, shall hand over the vehicle in question to the appellant, immediately, on receipt of payment from Insurance Company, respondent No. 4. The balance, if any, shall be paid by the complainant to respondent No. 2. The litigation costs of Rs. 2,000 were enhanced to Rs. 10,000 which were to be paid by the respondent Nos. 1 and 2, jointly and severally.

6. WE have heard the Counsel for the petitioner and respondent Nos. 2 and 4 and the complainant, who appeared in person. We have also perused the written arguments filed by the complainant and M/s. Tata Motors. The complainant, who argued the case, in person, has invited our attention towards the document, Ex. C -6, which clearly goes to show that the PDI check was conducted on 17.4.2007, i.e., 3 days after the purchase of the car. That PDI check was

conducted before the issuance of the Invoice. The said service cannot be said to be the "first service", but it was PDI, as mentioned in the document as "service type". He also provided service history from Ex. C -6 to Ex. C -9, which goes to show that the complainant had to get the manufacturing defect rectified, time and again. Ex. C -7, is dated 16.6.2007, 25.7.2007, 30.7.2007 and 1.10.2007. Ex. C -8 reveals that the said vehicle was also taken for service on 19.10.2007 and 4.11.2007. It is true that all the items were replaced "free of cost". It must be borne in mind that this must have caused harassment, mental agony, anger, anguish, frustration and sadness on the part of the person, who had bought a very new car.

7. THE complainant vehemently argued that the accident took place because there was some defect in the power steering which was changed by Dada Motors, on 12.11.2007. The same is evident from the job card, Ex. C -4 to C -43, particularly, from Exs. C -39 and C -40. The estimate report, Exs. C -48 mentions power steering rack and pinion assembly value at Rs. 20,900. The pinion value was Rs. 4,08,989.27, but the Surveyor finally assessed the loss at Rs. 1,52,702.49. The Garyson Motors Pvt. Ltd. and Oriental Insurance Co. Ltd., Ops. 1 and 2, respectively, had cashless tie -up vide Ex. C -66. The Garyson Motors informed that the vehicle was ready, vide letter dated 29.7.2008. It was stressed that the complainant was without vehicle for the last six years.

We have also perused the written submissions filed by Tata Motors Ltd., petitioner/O.P. 1. It was argued that the scope of the revision petition is limited to the jurisdictional errors in terms of the decision of the Hon'ble Supreme Court in the case of Ruby Chandra Dutta v. United India Insurance Co. Ltd., : II (2011) CPJ 19 (SC) : IV (2011) SLT 303 : 2011 -11 SCC -269. It was also contended that the complainant has not filed any revision petition against the order of the State Commission and as such, the order of the State Commission has attained finality for the complainant.

8. THE job card dated 12.11.2007 mentioned about steering noise. Dada Motors also mentioned steering "noisy", on 13.11.2007. The said mechanical defect was rectified according to O.P. 1. It is also pointed out that the complainant is blowing hot and cold in the same breath. He claimed that the accident was due to mechanical defect and later doing volte face and complete turn -around by ascertaining that the accident was due to glaring lights from the opposite direction, leading to the vehicle colliding with the dead animal. It was alleged that the accident clearly goes to show the hollowness and falsity of the case. There was no manufacturing defect at all. The car met with an accident on 20.11.2007. Clause 5 of the warranty clearly mentions that the warranty does not apply to the cause which has led to the accident.

9. COUNSEL for the petitioner has also cited the authorities: (i) Tata Motors Ltd. v. Hazoor Maharaj Baba Desrajji Chela, : IV (2013) CPJ 444 (NC) : RP No. 2562 of 2012, decided on 25.9.2013.

- (ii) Amar Singh v. Union of India, IV : (2011) SLT 179 : 11 (2011) CLT 304 (SC) : (2011) 7 SCC 69.
- (iii) Dilip Singh v. State of Uttar Pradesh, : (2010) 2 SCC 114.
- (iv) S.P. Chengalvaraya Naidu v. Jagan Nath, : II (1993) BC 546 : (1994) 1 SCC 1.
- (v) Susheel Kumar Gabgotra v. Maruti Udyog Ltd., : II (2006) CPJ 25 (SC) : : (2006) 4 SCC 644.
- (vi) Bharti Knitting v. DHL, : II (1996) CPJ 25 (SC) : (1996) 4 SCC 704.
- (vii) Marine Containers v. Go Go Garments, : AIR 1999 SC 80.
- (viii) The Chairman, Thiruvalluvar Transport Corporation v. The Consumer Protection Council, : I (1995) CPJ 3 (SC) : AIR 1995 SC 1384.
- (ix) Union of India & Anr. v. M. Adai Kalam,, II (1993) CPJ 145 (NC).
- (x) Pradeep Kumar v. Citi Bank, : II (1999) CPJ 7 (SC) : VI (1999) SLT 550 : AIR 1999 SC 3119.
- (xi) Consumer Unity & Trust v. Chairman & MD, Bank of Baroda, : I (1995) CPJ 1 (SC) : : 1995 SCC (2) 150.
- (xii) Union of India v. Seppo Rally, : III (1999) CPJ 10 (SC) : VII (1999) SLT 633 : (1999) 8 SCC 357.
- (xiii) Godfrey Philips v. Ajay Kumar, : IV (2008) SLT 62 : II (2008) CPJ 5 (SC) : (2008) 4 SCC 504.
- (xiv) Kalyan Singh v. C.P. Joshi, : I (2011) CLT 147 (SC) : I (2011) SLT 626 : 2011 11 SCC 786.
- (xv) Classic Automobiles v. Lila Nand Mishra & Anr.,, I (2010) CPJ 235 (NC).
- (xvi) Sushila Automobiles Pvt. Ltd. v. Dr. Birendra N. Prasad, : III (2010) CPJ 130 (NC).
- (xvii) Tata Motors v. K.S. Thakur, RP No. 1153/2005, decided on 21.8.2009.

Having considered the pros and cons of the case, we are of the considered view that the vehicle cannot be replaced. It must be borne in mind that the vehicle met with an accident and that fact has to be taken into consideration. The respondent No. 1 is not liable to pay the damages which were caused in the accident.

10. WE find force in the arguments of the respondent No. 1, in a measure. We cannot lose sight of the following facts which go against the manufacturer and respondent No. 2. The fact that the complainant had to visit the service station, time and again, for no fault of him, stands adequately proved. Initially and permanently, there was defect in the manufacture of the car. There were as

many as eight defects in the manufacture of the vehicle, on the very third day of its delivery, as mentioned above. There was steering snag which already stands admitted by the manufacturer. All the documents mentioned above, Ex. C -1 to C -43, prove this fact. The complainant had to take several rounds to the service station and this certainly tantamounts to harassment and mental agony. The complainant had purchased a car and not a problem for himself. To get the relief, he has been running from this Fora to that Fora. There is no guarantee that the power steering changed by the petitioner/O.P. 1 was 100% rectified and the accident did not occur due to steering problem.

11. ALL the above said authorities are entirely different from the facts of the instant case. Each case has its own facts. No rule of thumb can be laid down for each and every case. The facts of this case are unique and have got no parallels. The facts of this case speak for themselves. The admission of manufacturing defects comes out from the horse's mouth itself. This is a case where the petitioner/O.P. 1 and Garyson Motors/O.P. 2 admit that previously there used to be manufacturing defect. That portion was never denied. The possibility of occurring of the accident due to steering and other defects, cannot be ruled out. The judgment of the State Commission goes to show that the vehicle had been taken for repairs to the workshop for about eleven times. The O.P. 2 failed to issue Invoice on 13.4.2007 and deferred it to 18.4.2007, with some motive or intention. This is apparent that the Ops. play fast and loose with consumers. Under these circumstances, there was no need to bolster this case with expert's evidence. In view of these circumstances, we find no flaw with the order passed by the State Commission. It be complied with, within 90 days, from the date of receipt of this order. Otherwise, it will carry interest @ 10% p.a., till its final realization. It was also made clear by the order passed by this Commission, on 28.1.2014, which is already quoted above.

12. GARYSON Motors is directed to release the vehicle in favour of the complainant, without charging any amount from the complainant. The car must be roadworthy and sans defects. The order be complied with, within 90 days, of the receipt of the order, otherwise, it will carry further penalty of Rs. 1,000 per day, till the car is handed over to the complainant. Revision petitions stand disposed of.

The Registry is directed to send back the Original records summoned from the District Forum and State Commission, along with copies of this order.