
(1997) 12 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

TECHNO AIDS And ASSOCIATES

APPELLANT

Vs

TATA ELECTRIC LOCOMOTIVE CO. LTD.

RESPONDENT

Date of Decision : 03-12-1997

Acts Referred:

Citation : 1998 1 CPC 488 : 1998 1 CPR 297 : 1999 1 CPJ 291

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Complaint dismissed

Judgement

1. - THE complainant purchased a Tata Estate car from the 2nd opposite party dealer for a sum of Rs. 4,34,024/-. THE 1st opposite party is the Manufacturer and the 3rd opposite party is the Service Centre of the 1st opposite party. He had taken delivery of the vehicle on 30.1.1994.

2. ACCORDING to the complainant right from the beginning the performance of the vehicle was not proper. The complainant perforce had to send the vehicle frequently and periodically for repairs to the 2nd and 3rd opposite parties. The opposite party have changed the battery, clutch plate, tyre, air conditioner etc. These changes have been made within short span of time and it was not due to normal wear and tear. Further the vehicle has been constantly giving problems in terms of its suspension, engine overheating, steering wobbling, engine oil leakage, break engine, oil problem etc. In spite of several visits to the opposite parties for repairs no lasting solution was found. The recurring problems were due to the material manufacturing defect. During the period when the vehicle was in the 3rd opposite party Service Station the complainant had been forced to hire taxis or private cars for his use. In spite of several reminders to the opposite parties they failed to rectify the defects. It is the bounden duty of the opposite party to ensure that the vehicle is in proper running condition and otherwise they have to supply a new car in lieu of the defective car. In spite of legal notice to the opposite parties to rectify the defects or to make good the loss the opposite parties have not done anything. On these grounds the complaint has been filed for directing to the opposite parties to replace the vehicle in

question with a new one or in the alternative to pay a sum of Rs. 5,02,000/- being the cost of a new vehicle. Besides the complainant has claimed other sums under different heads. The 1st opposite party in its written version would contend that having used the vehicle for over two and a half years after purchase it will be futile on the part of the complainant to seek relief for replacement of the vehicle with a brand new one or of the value thereof. The vehicle having been purchased by the complainant which is a partnership firm for its commercial activities, the complaint cannot be maintained in view of Section 2(l)(d)(i) of the Consumer Protection Act. The complainant failed to take the car to the authorised Service Centre for the 2nd and 5th free services noted in the warranty given by the opposite party so as to enable the Service Centre to check and correct any disorder that might have arisen and the cause for the same. The complainant having thus acted contrary to the express terms of the warranty and the complainant cannot claim any right under the warranty, but however the opposite parties continued to extend the warranty throughout the warranty period of 18 months at free of charge basis as a gesture and goodwill. All the defects pointed out by the complainant on various occasions were properly carried out and the repairs were mainly minor ones. The vehicle had been under the constant use of the complainant without any major problem. The allegation that the vehicle had manufacturing defect is not true. There is no truth in the allegation that the complainant was forced to engage private cars during the period the vehicle in question was with the 2nd and 3rd opposite parties for repairs. The opposite parties are not guilty of any deficiency in service and therefore the complaint is liable to be dismissed.

The 2nd opposite party also in its written version contended that the vehicle was purchased for commercial purpose of the complainant's firm and therefore the complainant is not a consumer as per the definition in the Act. It further contended that the warranty had already expired and the claim is barred by limitation. The vehicle was brought to this opposite party for repair only twice on 29.11.1994 and 29.12.1994 and on both the occasions the vehicle was properly attended to and delivered back to the complainant in perfect working condition. This opposite party also like the 1st opposite party contends that the complainant has availed of 3 free services and having failed to avail of the 5 free services, it is not open to the complainant to avail of any benefits under the warranty clause. On receipt of a letter dated 7.7.1995 from one Mr. Bandari requesting the Director of the 2nd opposite party, to do the needful for the vehicle in question, the complainant was asked to leave the vehicle in the Service Station and to that the complainant wrote back saying that he would advise as to when he would require the vehicle to be attended to. While so, the complainant had chosen to send a Lawyer notice on 17.11.1995. In these circumstances this opposite party is not liable to do anything to the complainant or to pay any amount to him.

3. THE 3rd opposite party too in their written version would contend that the car was purchased for commercial purpose and therefore the complaint is not

maintainable. This opposite party further contends that it is only a Service Centre of the 1st opposite party and not the manufacturer of the vehicle and as such no relief as stated in the complaint can be claimed against it. THE vehicle was brought for various repairs which were minor in nature and the repairs were attended to by this opposite party to the satisfaction of the complainant. THEREfore the complaint is liable to be dismissed as against this opposite party. The points that arise for consideration are: (i) Whether the vehicle in question was defective that entitles the complainant to seek for replacement of it with a new one or the value of a new vehicle. (ii) Whether the complainant is entitled for any other relief.

4. POINTS : The main defence taken by the 1st opposite party manufacturer as well as the other 2 opposite parties is that the complainant has purchased the vehicle for commercial purpose and therefore the complainant is not a consumer within the meaning given in the Consumer Protection Act and as such the complaint is not maintainable. It is not in dispute that the complainant is a partnership firm and the complainant has purchased the car. It is therefore manifest that the vehicle has been purchased for commercial purpose. This being the position in view of Section 2(l)(d)(i) of the Consumer Protection Act the complainant is not a consumer in relation to the alleged defects in the car Therefore the complainant cannot claim that the car has manufacturing defects and therefore it can claim replacement of the vehicle or to seek the value thereof. However, it was argued that under the warranty Ex. B4 issued by the 1st opposite party manufacturer the complainant is entitled for free service of repairs and replacement of parts, but for service and replacement done during the warranty period of 18 months also the opposite parties have collected charges and that would amount to deficiency in service on their part and it follows that whatever amount thus collected is liable to be refunded to the complainant. In this connection, the learned Counsel appearing for the 1st opposite party read out Clause 4 in the terms and conditions of the warranty which is as follows: " As for such parts as tyres, batteries, rubber parts, electrical equipments and full injuncion pumps not manufactured by us but supplied by other parties, this warranty shall not apply, but buyers of the vehicle shall be entitled to, so far as permissible by law, all such rights as we may have against such parties under their warranties in respect of such parts."

The learned Counsel contends that it was under this clause the complainant was charged for the spare parts. It is not the case of the complainant that the repair work done and spare parts replaced will not come under this clause. As contended by the learned Counsel for the 1st opposite party, the complainants would not have paid the amount if really they were not liable to pay amounts under the warranty. Therefore the arguments advanced with regard to warranty on behalf of the complainant that during the warranty period for replacement made the complainant should not have been charged has no merit. Further from the Job Cards Ex. B13 and B14 filed by the 2nd opposite party for the works done to the vehicle it appears that no major defect was there in the car but they

were only minor works to be done.

5. FOR the above reason we hold that there is no merit in the complaint. In the result, therefore, the complaint is dismissed. However, there will be no order as to costs. Complaint dismissed.