(1999) 08 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

VIKRAM MAHURKAR APPELLANT

Vs

Hindustan Motors Limited RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Citation : 2002 1 CPJ 6

Hon'ble Judges : Sardar Ali Khan , S.K.Parthasarathy J.

Final Decision : C.A.disposed of

Judgement

1. THIS order disposes of the compensation application filed by Shri Vikram Mahurkar under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (for brief the Act), seeking compensation from the respondent-Hindustan Motors Ltd., Calcutta on the ground that the latter indulged in unfair trade practices.

2. THE brief facts of the case as contained in the compensation application may be summarized. THE applicant had purchased an Ambassador (Nova) car on 22nd November, 1990 from the respondent through its authorised agent Western India Motor Company, Baroda. THE car was purchased by the applicant after seeing the advertisement of the respondent that Ambassador (Nova) had the quality of smooth ride suspension. Immediately after purchasing the car on 27th December, 1990 the applicant wrote to the respondent pointing out major defects in the car mainly relating to "noise in the suspension and poor paint finish". THE car was repaired 4 times with no positive results and repainted twice. It is the case of the applicant that a car painted twice in a local garage cannot match the standard of facilities existing in the manufacturer''s paint shop. THE applicant had been asking for replacement of the car which was not agreed to by the respondent and has, therefore, claimed compensation which includes refund of the total cost of the car of Rs. 1,58,400/-. The respondent filed a reply to the compensation application in which it has taken the preliminary objection that no enquiry relating to indulgence in unfair trade practice under Section 36B of the Act has been initiated and the compensation application is not

maintainable. It has also been pointed out that whenever the applicant sent the car or his authorised representative for repairs the same had been duly attended to and the repairs were carried out. The car was last attended to by its dealers Cama Motors Ltd., Ahmedabad in June, 1991 and the car was handed over to the authorised representative of the applicant on his satisfaction. The respondent has also taken the stand that the warranty policy of the respondent did not cover replacement of the car and the terms of warranty was accepted by the applicant. According to the respondent allegations of a few minor defects would not constitute unfair trade practice within the meaning of Section 36A of the Act. After the pleadings were over, the following issues were framed : (1) Whether the compensation application is not maintainable in law for the reasons set out with the reply as preliminary objection ? (2) Whether the respondent has been indulging in restrictive trade practices as alleged ? (3) If the answer to the foregoing issue is in the affirmative, whether the alleged restrictive trade practices are prejudicial to public interest ?

On behalf of the applicant Shri Vikram Mahurkar was examined as a witness. It was agreed between both the parties that for the purpose of cross-examination the questions filed by the learned Counsel for the respondent may be replied by the respondent in the form of affidavit In the reply to the questions the witness Shri Vikram Mahurkar stated that the car was received from the dealer on 27.6.1991 and at that time no trial was taken. The suspension of the car was not serviced as claimed by the respondent but welded and repaired. He denied the suggestion of the respondent that there was no defect in the said car and repainting, and servicing of suspension was done to keep the customer happy.

3. ON behalf of the respondent, the affidavit of R.R. Damani was filed in which he has stated that the applicant''s authorised representative one Shri D. Dave came to take delivery of the car on 29.6.1991 and after an extensive and long trial run the representative took delivery of the car on 29.6.1991 and issued a satisfaction note. He stated that the job of the dealer, The Western India Motor Car Company, Baroda, showed that when the car was attended on 13.2.1991 it had 10,641 km. which clearly established the fact that the car was extensively used by the complainants without proper maintenance. The applicant wrote to the respondent on 3.7.1991 that he would get back to the respondent relating to the defects but did not write again and press with his complains. The applicant filed a number of photographs and audio cassettes reportedly containing the conversation with the respondent as evidence. The respondent stated that they could not be taken as evidence under provisions of the Indian Evidence Act. It was decided that the decision in this regard will be taken at the time of final arguments.

4. WE gave a hearing to Dr. V.K. Agarwal, Advocate for the applicant and Mr. N.R. Khaitan and Mr. Aloke Dholakia, Advocates for the respondent. WE have carefully considered the records of the case, evaluated the evidences adduced and took the arguments of Advocates into account. As regards the preliminary objections

raised by the respondent it is well-settled that a compensation application under Section 12B of the Act can stand on its own legs and it is not necessary that a separate complaint under Section 36B of the Act should be instituted because the award of any compensation under Section 12B will be only after establishment of the allegations relating to the restrictive or unfair trade practice. As regards the photographs and audio cassettes are concerned, no arguments were advanced during the final hearing to press a decision in this case. We also do not consider it necessary to look into them for arriving at a decision with regard to the allegations contained in the compensation application. The facts that the car was purchased by the applicant and it was attended to with regard to the noise in the suspension and complaint relating to the painting were admitted by the respondent.

5. THE argument of the Advocate for the respondent was that the defects were attended to the satisfaction of the applicant and in any case the warranty policy did not envisage replacement of the car as demanded by the applicant. It is the case of the respondent that a satisfaction note was issued when the applicant took delivery of the car from the dealer at Ahmedabad on 27.6.1991. THE letter dated 27.6.1991 given by the applicant as well as the letter dated 3.7.1991 indicated that the applicant would get back to the respondent regarding the rectification of the defects. According to the respondent the applicant did not contact the respondent thereafter. We are of the view that since the applicant filed a compensation application immediately thereafter and no adverse inference be taken against the applicant with regard to his not writing back to the respondent. However, it is natural to presume that the applicant would not have taken the delivery of the car unless it had been attended to the satisfaction of the applicant at the time of taking delivery. We also note that the statement of affidavit of the respondent''s witness that when the car was first attended to by the respondent''s dealer in Baroda on 13.2.1991 it had 10,641 km. has not been rebutted by the applicant.

6. THE Advocate for the applicant emphasized the point that the advertisement of the respondent which induced the applicant to purchase the car clearly focussed "new smooth ride suspension of the car". He pointed out that the witness of the applicant during his deposition had brought to the notice of the Commission that the respondent had switched over to the conventional old suspension system subsequent to the dates of purchase of the car by the applicant. He further submitted that the cross-examination of the witness of the respondent admitted that the new suspension system was withdrawn and the former suspension system was re-introduced which indicates that the warranty given by the respondent was not based on adequate or proper test and amounts to an unfair trade practice. On the other hand, the Advocate for the respondent argued that the change in the suspension system was not due to defects but was effected on the preference of the customers. THE change was made much later after the purchase of the car by the applicant. The Advocate for the applicant argued that the respondent admitted having attended to the complaints of the

applicant and the car was repainted twice. There was a big gaping hole on the floor on the right side of the car. The fact that the car had to be repaired repeatedly immediately after purchase of the car and had to be repainted twice and the fact that the car had a big gaping hole in the floor prove that the respondent has passed on a sub-standard repainted second hand car duly renovated and sold as new goods.

We are unable to agree with the contention of the applicant that the respondent indulged in any unfair trade practice as far as the change of suspension system in the car manufactured by it unless it is clearly proved that the change was effected because the replaced suspension system was inherently defective in its design. The manufacturer is entitled to make technological changes in its products and any defects in the suspension in a particular car did not necessarily mean that the suspension system was inherently defective and that was the reason why the change was effected. We, however, hold that the respondent was guilty of indulgence in unfair trade practice falling within the definition of Section 36 A (1)(i). Any customer who purchases a new car from the respondent is entitled to expect trouble-free performance of the car at least for some time after purchase and to get a feeling that the product he purchases is a new one by its appearance. It has been admitted by the respondent that the car had to be repainted twice within a span of six to eight months at local workshops. The argument of the respondent that this was done wholly to keep the applicant happy does not carry conviction at all. It has also been admitted by the respondent that the suspension system was attended to by its dealers both at Baroda and Ahmedabad during this period strengthening the charge of the applicant that the new car did not meet that exception of the customer with regard to a new car. Even though we have not admitted the photographs filed by the applicant as evidence the statement of the applicant that there was a big hole in the floor of the car has not been denied by the respondent and we have no reason not to rely on this statement of the applicant having regard to the averments made in the original application. In the compensation application it has also been stated that one of the defects noticed at the time of purchase of the car related to water seepage.

7. FOR the aforesaid reasons and on the facts and circumstances of the case, we come to the conclusion that the car supplied by the respondent to the applicant did not fully meet the standard and quality of a new car conforming to the representation of a well-known manufacturer of cars like the respondent and to this limited extent there has been indulgence in unfair trade practice. The question for determination now is whether the applicant is entitled for any compensation based on the above unfair trade practice. It is not the case of the applicant that the car was so defective that it could not be used by the applicant. The statement on affidavit of the respondent that when the car was attended to by its dealer on 13.2.1991 at Baroda it had the meter reading of 10,641 km. was not rebutted. The grievance of the applicant in the compensation application does show that the defects related only to rattling noise of the suspension

system and poor paint finish. They have been attended to by the respondent admittedly and the car was repainted twice and the applicant only states that after repainting it did not match the standards of a new car. We have come to the conclusion that the change over from the new suspension system to the old suspension system did not amount to unfair trade practice and the respondent has attended to the suspension system of the applicant''s car. The complaint was filed on 16th March, 1992 and till today the car has been with the applicant. There has been no statement of the applicant that the car is not usable or was not used. Under these circumstances and after a lapse of seven years from the date of purchase of the car, we do not consider it just to either direct the manufacturer to replace the car or refund the original price of the car. We concede that the applicant had paid the full price for purchasing the new car and the sub-standard finish of the painting as well as the defects in the car in the form of rattling noise in the suspension immediately after purchase must have caused mental agony and frustration. Even though we are satisfied that the respondent has attended to the defects of the car and has also repainted it twice the applicant is entitled for compensation for the mental agonies suffered by him as we have held that the respondent has indulged in unfair trade practice to the extent pointed out by us. It is very difficult to quantify the mental agony in terms of money. Having regard to the facts and circumstances of the case and taking into account the price paid for the car we assess this at Rs. 50,000/-. We, therefore, direct that the respondent should pay the applicant a sum of Rs. 50,000/- as compensation in this case. We also direct that the respondent shall pay the cost of the proceedings in this case which we assess as Rs. 5,000/-. We further direct that the respondent shall pay the above amounts within a period of eight weeks and file an affidavit of compliance. C.A. disposed of.