(2023) 10 NCDRC CK 0042

National Consumer Disputes Redressal Commission

Case No: First Appeal No. 766 Of 2021

Mercedes Benz India Private Limited	APPELLANT
Vs	
Smt Revathi Giri	RESPONDENT

Date of Decision: Oct. 11, 2023

Acts Referred:

- Consumer Protection Act, 1986 - Section 2(1)(d), 13(1)(c), 14(1)(d)

Hon'ble Judges: Subhash Chandra, Presiding Member; Avm J. Rajendra, Avsm Vsm (Retd.), Member

Bench: Division Bench

Advocate: Vishal Bhardwaj

Final Decision: Disposed Of

Judgement

Subhash Chandra, Presiding Member

1. This first appeal challenges the order of the Telangana State Consumer Disputes Redressal Commission, Hyderabad (in short, 'the State Commission') in Complaint no. 26 of 2015 whereby the appellant has been directed to replace the car purchased by respondent no.1 with another car of same/similar model and to take back the old car or, alternatively, to refund the full purchase price of Rs.42,30,000/- along with interest @ 6% per annum from the date of invoice till realization and take the possession of the old car along with cost of Rs.20,000/-. The appellant is before us with the prayer to set aside the impugned order dated 23.09.2021 and to pass any order or directions as deemed fit.

3. We have heard the learned counsel for the appellant and perused the material on record carefully. None appeared on behalf of the respondent on the date of argument, i.e., on

17.08.2023, even after a final notice to him dated 05.04.2023 which was served on the respondents. Hence, the respondents were proceeded ex parte.

4. The relevant facts of the case in brief are that respondent no.2, who is a dealer of the appellant had sold a Mercedes Benz CC 220 CDI BE car which chassis number WDD2040026L073919 and Engine number 6519113207203 on 30.09.2014 for a sum of Rs.42,30,000/- to the respondent no.1. The vehicle experienced various defects such as in the display of navigation screen, pronounced drifting towards the left side and power steering wheel being very hard. The vehicle was taken on several occasions to the workshop of respondent no.2 and was attended to. The respondent approached the State Commission on the grounds that the vehicle suffered from inherent manufacturing defects which were evidenced by the frequency of repairs that were required and the fact that the warranty of the vehicle was extended for the 4th year by the appellant as a gesture of good will. On contest, the State Commission relying on the decision of this Commission in OP No. 9 of 2006 dated 17.09.2007 in *M/s Control and Switch Gear Co. Ltd., vs M/s Daimler Chrysler India Pvt., Ltd. and Ors*., has held that :

In the present case, we can say without hesitation that if the car is defective, may be, on one or other count but that would not give any satisfaction to the consumer who has spent large amount for its purchase.

We are of the opinion that there is no provision in the CP Act that absolves the manufacturer of goods from the liability to compensate having sold defective goods. The fact remains that any person who buys a vehicle does so with an object that the same will provide comfort and peace of mind – at lease for some time. ***However, if such a vehicle starts giving trouble from the very first day of purchase, then it is definitely an area of grave concern.***

Thus, the brand and luxury claims of opposite parties seems to be hollow as the complainant lost her peace of mind and suffered immense discomforts and harassment. The vehicle suffered from inherent defects warranting numerous change of parts/ repairs from time to time*. Therefore, despite the contentions of the opposite parties having replaced parts under warranty and its claim of warranty clauses,* ***the opposite parties had supplied a defective vehicle to the complainant and the consumer/ complainant is entitled to get replacement or refund of the purchase price of the car along with interest.***

[Emphasis supplied]

5. This order is impugned on the grounds that the liability of an automobile manufacturer only arises when an inherent manufacturing defect is duly proved by an expert opinion and is otherwise limited by the terms of the warranty. It is also contended that there was no provision under the Consumer Protection Act, 1986 to impose cost or compensation for mere inconvenience without proving deficiency in service. It was submitted that the relationship of

the appellant and respondent no.2 was that of Principal-to-Principal and hence, the appellant was not liable for any act of commission or omission on the part of the respondent no.2 (Dealer). The appellant has also contended that as per the law laid down in *Chief Administrator, HUDA and Anr. Vs Shakuntla* Devi (2017) 2 SCC 301, the Hon'ble Supreme Court has held that:

compensation could not be awarded in the absence of any loss or injury without establishing demonstratable negligence.

Reliance was also placed in Maruti Udyog Ltd., vs Susheel Kumar Gabgotra and Anr., AIR 2006 SC 1586 wherein the Hon'ble Supreme Court has held that:

the *obligation of the manufacturer of the vehicle under warranty was limited only to the extent of repair or replacement of any part found to be defective.*

On merits, it was argued that the vehicle had run over 56,815 kms as on 18.07.2019 and hence, it was evident that the vehicle was not defective. The order of the State Commission was stated to be arbitrary since no expert opinion as required under section 13 (1) (c) of the Act had been brought on record and as such the order was stated to be per incuriam and was based on presumptions and surmises. It is also contended that there was no privity of contract between the appellant and respondent no.1. The fact of the vehicle drifting to the left side was also stated to be attributable to rough and negligent driving which had not been appreciated by the State Commission according to the appellant, since no deficiency of service on the part of the appellant had been proven under section 14 (1) (d) of the Act. The appellant has also relied upon the judgment of the Hon'ble Supreme Court in *Ranveet Singh Bagga vs KLM Royal Dutch Airlines* 1999 AIR SCW 22 wherein it has been held that:

…… the burden of proving the deficiency in service is upon the person who alleges it. The complainant has on facts been found to have not established in any willful fault, imperfection, shortcoming or inadequacy in service ……. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the appellant as these do not amount to deficiency in service …….. According to the appellant deficiency in service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. In efficiency, lack of due care, absence of bonafide rashness, haste or omission and the like may be the facts to ascertain the deficiency in service …….

6. The appellant has also relied upon the fact that the car was always duly attended to by respondent no.2 and complaints were rectified. He has relied upon this Commission's order in *Maruti Udyog Ltd., vs Atul Bhardwaj* in RP No. 2366 of 2004 decided on 29th January 2009 which held that:

the fact that the vehicle was required to be taken 10 times during 10 months for repairs cannot be the basis for the inference that the vehicle was suffering from inherent manufacturing defect.

Reliance was also placed on this Commission's order in *H Vasanthakumar vs M/s Ford India Ltd*., FA no.490 for 2004 and *TATA Motors Ltd., and Ors vs Ashish Aggarwal and Anr*., in RP No. 12 of 2008 which held similarly, as also held in *Sushil Automobiles Pvt. Ltd., through its Manager Shri Kamlesh Kumar Singh vs Dr Birendra Narain Prasad and Ors.*

7. On behalf of the respondent it was argued that the vehicle presented problems right from the day of purchase when the navigation system was found to be defective and that the vehicle had to be repeatedly taken to the work shop on several occasions for various defects. Therefore, the objective of having purchased a high end luxurious vehicle had been defeated and therefore, the order of the State Commission was valid and should be upheld.

8. The moot issue in this appeal is whether respondent no.1 had established before the State Commission the fact of an inherent internal manufacturing defect as required under the provisions of section 13 (1)(c) of the Act. This section reads as under:

13. (1) Procedure on admission of complaint (1) The District Forum shall, [on admission of a complaint] if it relates to any goods -

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

9. From the material on record it is manifest that no expert opinion of any authorized laboratory or authority has been brought on record to establish that the vehicle suffered from any defect that could be ascribed to the manufacturer of the vehicle by the appellant. The vehicle had admittedly run over 56,815 kms as on 18.07.2019 when it was brought to the workshop of respondent no.2. It is not the case of the respondent that the vehicle was not properly attended to or that the defects were not rectified as per the terms and conditions of the warranty valid for three years. There is, therefore, no deficiency in service that has been established in this particular case either on account of any manufacturing of defect of the vehicle under section 13 (1) (c) or repairs by respondent no.2 for which the appellant would be liable. In the absence of any deficiency in service being established under section 2 (1) (d) the findings of the State Commission that the vehicle suffered from inherent manufacturing defects cannot be sustained. Section 13 (1) (c) makes it explicitly clear that an inherent

manufacturing defect needs to be established through the process of examination by way of an expert opinion. Without such an examination being undertaken, the conclusion that there were inherent manufacturing defects cannot be arrived at. Admittedly, provisions of section 13 have not been followed in this case. Defects which are covered under the terms and conditions of the warranty cannot be ascribed to be an inherent manufacturing defect without the requisite examination of the vehicle after applying the rigour of section 13 (1) (c). The defects which are covered under the terms of warranty cannot be concluded to be a manufacturing defect. In the absence of any expert opinion, such a conclusion is conjectural and based on surmise and cannot be sustained. The State Commission's order is therefore, liable to be set aside on these grounds.

10. For the foregoing reasons and in the facts and circumstances of the case, we are inclined to allow the appeal. The order of the State Commission is accordingly set aside. There shall be no order as to costs.

11. All pending IAs, if any, shall stand disposed of by this order.