

(2004) 05 NCDRC CK 0024

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SAINIK AUTOMOBILES
AND COMPANY

APPELLANT

Vs

Mahesh Chand Gupta

RESPONDENT

Date of Decision: May 24, 2004

Citation: 2005 1 CPC 367

Hon'ble Judges: Rachna , R.N.Prasad J.

Final Decision: Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter called the "Act") against the judgment and order dated 8.4.1992 passed by District Consumer Forum, Shahjahanpur in Complaint Case No. 125 of 1991.

2. THE complainant preferred a complaint case before the District Forum alleging that he booked a Vespa PL 170 scooter manufactured by M/s. Andhra Pradesh Scooters Limited, District Medak, Andhra Pradesh. He deposited a sum of Rs. 500/- towards the booking of the scooter, but ultimately it was not supplied with the result that a complaint was filed claiming compensation for mental torture and refund of Rs. 500/- so deposited along with interest.

In the written statement the opposite party No. 1, i.e., appellant took up the specific plea that the advance money made in the name of Andhra Pradesh Scooter Limited and, thereafter, after compliance of all formalities, receipt was issued by the appellant as a token of receipt of the advance money and thereafter the advance money was sent to M/s. Andhra Pradesh Scooters Limited, Distt. Medak and accordingly the liability to make the payment as demanded by the complainant was

denied.

The learned District Forum, after perusing the matter and hearing the submission, passed the impugned order.

3. WE have heard Mr. R.K. Gupta, learned Counsel for the appellant and since respondents are not present, there was no opportunity for hearing them. WE have also perused the material available on record as in spite of notices respondents are absent.

Placing reliance on the averments contained in the memo of appeal, it was argued by the learned Counsel for the appellant that the liability of refund of the money was of M/s. Andhra Pradesh Scooters Limited, Distt. Medak and not of the appellant as the only job of the appellant was, by its name the dealer, to book the scooter on the instructions of the manufacturing company, i.e., M/s. Andhra Pradesh Scooters Limited, and supply the same after receiving the price in case of availability of the scooter. The learned District Forum, thus it was argued, committed an error of law in asking the appellant to return the sum of Rs. 500/- towards booking money so deposited by the complainant along with interest at the rate of 18%. It was thus also argued that the deposited amount in the shape of a Bank draft was payable in the name of M/s. Andhra Pradesh Scooters Limited and the dealer is only recipient of the money and after receiving the same, the money was transmitted to the manufacturer, M/s. Andhra Pradesh Scooters Limited. It was further argued that M/s. Andhra Pradesh Scooters Limited has not filed any appeal and as such it can be presumed that the liability of payment is of the manufacturing company and as such the learned District Forum committed an error of jurisdiction in asking the appellant to make the payment.

4. MR. R.K. Gupta in support of his argument, placed reliance on the case law of *Bharat Motor v. Usha Rani Samal and Another*, I (1995) CPJ 33 (NC).

In the instant case the ultimate responsibility is of M/s. Andhra Pradesh Scooters Limited since it is recipient of the advance money. Liability of the dealer at the most was that the money was deposited as an advance with it, however, the same was remitted by it in the manufacturer's account. Obviously no liability can be fastened

on the dealer as the money was not ultimately accepted by the appellant/dealer. In the case law cited above the Hon"ble NCDRC too was of the view that there was no justification whatsoever for asking for the refund of the money by the dealer. The liability ultimately, it was held, was of the manufacturer. The arguments of Sri R.K. Gupta thus are squarely covered by the ratio cited above. The appeal has force. The judgment and order of the District Forum fastening liability on the appellant is set aside. ORDER The appeal is allowed, judgment and order of the District Forum is set aside as the ultimate liability is of the manufacturing company. M/s. Andhra Pradesh Scooters Ltd. is ordered to return the advance money along with 18% interest from the date of complaint till the date of payment. There will be no order as to the costs. Appeal allowed.