

GOSWAMY Vs S.A. SHARIFF REHAMAN

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: July 18, 1994

Citation: 1995 1 CPJ 362 : 1995 2 CLT 125

Hon'ble Judges: D.R.Vithal Rao , Susheela Cheluvvaraju J.

Judgement

1. IN this complaint the complainant has sought refund of a sum of Rs. 3,50,000/and a compensation of Rs. 4,00,000/from the opposite parties for

having sold him a 4th hand car by misrepresenting it to be a new car having run only 1,200 K.Ms.

2. THE Complainant averred that Opposite Party No. 1 is an automobile consultant and Opp. Party No. 2 is a broker in motor vehicles. Opp.

Party No. 3 was the owner of Maruti 1000 GLX Car bearing Registration No. KA-05/M-246.

It is the case of the complainant that Opp. Party Nos. 1 and 2 approached him in the evening of 11.3.1992 at his residence and offered to sell the

said car to him. The complainant further averred that Opp. Party Nos. 1 and 2 assured and convinced him that the car was a brand new one and

so the price was settled at Rs. 3,50,000/-. The Opp. Parties left the car with the complainant while the complainant issued a cheque for a sum of

Rs. 1,50,000/-. Opp. Party No.1 promised to change the Dunlop Radial Tyres to a brand new Ceat Radial tyres. The complainant was convinced

that Opp. Party No. 2 was a legal owner of the car.

Next day morning i.e., on 12.3.1992 Opp. Party Nos. 1 and 2 came to the residence of the complainant who delivered a cheque for a sum of Rs.

2,00,000/-, the balance sale amount, and took the Opp. Parties to the Bank and the Opp. Parties encashed both the cheques. The Opp. Parties

delivered R.C. Book and the transfer forms to the complainant. The said vehicle was transferred in the name of the Complainant on 18.3.1992 and

subsequently on 24.3.92. Opp. Party No. 2 gave the original warranty and service booklet to the complainant. The complainant on looking to the

said warranty and service booklet found that it was not a new car but it was purchased by one Joshua Kuruvilla on 7.6.1991 and who in turn sold

it to one K.C. Thomas at Kottayam. Opp. Party No. 3 had purchased the said car on 25.9.91 from the said Mr. K.C. Thomas of Kottayam.

3. THE complainant further averred that he came to know all these facts only on 24.3.1992 on looking the original warranty and service booklet;

the opp. parties thereby falsely represented that the said car was a new one though it was a 4th hand car. THE complainant further averred that

though the car belonged to Opp. Party No. 3 but the Opp. Parties 1 and 2 falsely represented to him that it was the car owned by Opp. Party No.

2. THE opp. parties had tampered with the speedometer and it showed as having run only 1,203 K.Ms. THE complainant on the basis of these

averments sought the compensation from the Opp. Parties, as referred to above.

The complainant as per the averments in the complaint has sought the relief mainly on two grounds;

(a) that Opp. Parties Nos. 1 and 2 falsely represented to him that the said car was a brand new car, though it was a 4th hand car; (b) that there

was several defects in the said car i.e. tampering of speedo meter etc. but it was falsely represented to him that it was a new car which had run

only 1,200 K.Ms.

4. THE Opp. Parties have filed the version and averred that Opp. Parties Nos. 1 and 2 did never represented to the complainant that it was a new

car nor they had promised to replace Dunlop tyres by Ceat tyres. THEy further averred that the complainant inspected the car, took trial of it and

on his being satisfied about the condition of the car the transaction was finalised and the complainant purchased the said car for a sum of Rs.

3,50,000/-. THE Opp. Parties averred that this transaction took place on 5.3.1992. THE Opp. Parties nextly averred that Opp. Parties Nos.1

and 2 never represented to the complainant that the said car was owned by Opp. Party No. 2. On the date of settlement of transaction itself the

R.C. book was left with the complainant and subsequently it was transferred in the name of the complainant on 18.3.1992 till then all along the car

and the R.C. book were with the complainant. THE warranty and the service manual was handed over to the complainant on 24.3.1992 as it was

with Opp. Party No. 3 at Mysore. THE Pop. Parties nextly contended that the car had run only 12,000 K.Ms, and the complainant being aware

of all these facts while entering into the transaction, obtained advance delivery of the car, paid the entire consideration amount, obtained all the

relevant documents from the Opp. Parties, got the vehicle transferred to his name and has been using the said car, the entire averments made

regarding the defect in the car and the false representation to him are all false and untrue. THE Opp. Parties on the basis of these averments,

sought the complaint to be dismissed.

During enquiry the complainant examined himself as C.W.1 and two witnesses C.W.2 Madhavan and C.W.3 Murlidharan and got Exts. C.1 to

C.12 marked in evidence. The Opp parties examined Opp. Party No. 2 as R.W.1 and R.W.2 Kumar and got Exts. R.1 to R.34 marked in

evidence.

We have heard the learned Counsel for the parties.

5. HAVING regard to the pleadings of the parties and the submissions made by the learned Counsel for the parties, the material point that arises

for our consideration is: Whether the dispute between the parties is a consumer dispute and the complaint is maintainable under the provisions of

the Consumer Protection Act, 1986?

6. IT is an admitted fact that Opp. Party No. 3 was the owner of the said car. IT is also material on record that Opp. Party No. 3 did never meet

the complainant. The transaction took place only between the complainant and Opp. Party Nos. 1 and 2.

The complainant himself has averred that Opp. Party No. 1 is an automobile consultant and Opp. Party No. 2 is a broker. The complainant in his

evidence at page 3 has stated thus: "O.P. No. 2 made me the false representation stating that he was the owner of the car. All the 3 opposite

parties had sold me a fourth-hand car by representing it to be a new car, thereby they have put me to a considerable loss and I claim Rs.

7,50,000/from all the three of them.

It is clear from the averments in the complaint and in the evidence of the complainant that none of the parties is a trader in cars.

7. THE consumer dispute arises when there is a complaint by a consumer making certain allegations against a trader.

The word Complaint has been defined under Section 2(1)(c) as under:

(c)"Complaint" means any allegation in writing made by a complainant that-- (i) and unfair trade practice or a restrictive trade practice has been

adopted by any trader, (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects. (iii) the services hired or

availed of or agreed to be hired or availed of by him suffer from deficiency in any respect; (iv) a trader has charged for the goods mentioned in the

complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing

such goods with a view to obtaining any relief provided by or under this Act; (v) goods which will be hazardous to life and safety when used, are

being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in

regard to the contents, manner and effect of use of such goods.

8. AN "unfair trade practice" has also been defined under Section 2(1)(r) of the Act. It means that a trader adopting a trade practice for the

purpose of promoting the sale, use or supply of any goods by making any statement falsely representing that the goods were of a particular

standard, quality and grade.

In the present case, the case of the complainant is that Opp. Party No. 2 though was not the owner of the car falsely represented to him that he

was the owner of the car.

As per the provisions of the Act the consumer dispute would arise when there is a complaint by a consumer making certain allegations against a

trader.

9. IN the present case, admittedly none of the Opp. Parties are the traders in motor cars. Opp. Parties Nos. 1 and 2 are only middlemen, who

brought about the transaction of sale of the car belonging to Opp. Party No. 3.

10. HAVING regard to these fact the dispute between the parties cannot be classified as a consumer dispute and on that ground the complaint is

untenable.

Another ground urged by the complainant was that the Opp. Parties have tampered with the speedo meter, though the vehicle had run 12,000

K.Ms. but it was represented to him that it had run only 1,200 K.Ms, and this is a material defect in the car.

The word "defect" has been defined under Section 2(1)(f) of the Act, which reads as under:

"defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or

under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in

relation to any goods.

11. THE term "defect" as defined under Section 2(1)(f) of the Consumer Protection Act has specific connotation; it means imperfection or

shortcoming in the quality, potency, purity or standard required to be maintained by the trader.

In the present case, as referred to above, none of the Opp. Parties including Opp. Party No. 3 are the traders in the motor cars.

12. THEREFORE, even on this count the dispute and the complaint by the complainant cannot be classified as a complaint under the provisions of

the Consumer Protection Act.

Having regard to these facts and in the circumstances of the case, we hold and record that the dispute between the parties is not a consumer

dispute and the complaint of the complainant is not maintainable under the provisions of the Consumer Protection Act.

In the result, therefore, this complaint fails and it is dismissed as not maintainable. The parties are directed to bear and pay their own costs.

Complaint dismissed.