(1995) 02 NCDRC CK 0011

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

NATIONAL CENTRE FOR HUMAN SETTLEMENTS And ENVIRONMENT		APPELLANT
	Vs	
FAIRDEAL MARWAR GARRAGES (P) LTD.		RESPONDENT

Date of Decision: Feb. 6, 1995

Citation: 1995 3 CPJ 335 : 1996 1 CLT 581

Hon'ble Judges: G.G.Sohani , Saroj Rajwade J.

Final Decision: Complaint partly allowed

Judgement

1. THIS is a complaint under the provisions of Section 17(a)(i) of the Consumer Protection Act, 1986, hereinafter referred to as the "Act".

2. THE facts giving rise to this complaint briefly are as follows:- THE complainant is a voluntary consumer Association registered under the M.P. Societies Registration Act, 1973 and is working in the field consumer protection. THE complainant has taken up the cause Of Sh. D.S. Sharma, hereinafter referred to as the "consumer". He is a physically handicapped person and because of his disability is required to use crutches for conducting the ordinary business of life. Respondent No. 1 is an authorised dealer at Bhopal of Respondent No. 2, the manufacturer of Maruti Cars. At the material time Respondent No. 2 was manufacturing Maruti 800 handicapped control car - TRD Model. THErefore, the consumer sent an application to Respondent No. 2 through Respondent No. 1, in the prescribed form, together with a deposit of Rs. 10,000/- for purchase of

Maruti 800 handicapped control car. On 19.7.1991 vide letter Annexure 2, Respondent No. 1 informed the consumer that his booking for the handicapped control car had been accepted by Respondent No. 2, that the cost of handicapped control car, delivery ex-factory Gurgaon, was Rs. 1,33,178.18, and that after adjusting the amount of Rs. 10,000/- which was initially deposited by the consumer, he should arrange to make payment of the balance amount by a demand draft in favour of respondent No. 2 payable at New Delhi. THE consumer was further informed by that letter that the model in question was not in regular production of Respondent No. 2, that delivery period might be delayed and that the actual delivery period would be communicated after remittance of the balance payment to Respondent No. 2 through Respondent No. 1. THE consumer was further informed that the price quoted was subject to change and the price ruling at the time of delivery would be payable. On 6.9.1991 vide Annexure 3 the consumer was informed that as a result of increase in the price of the car, he would be required to pay the balance amount of Rs. 1,59,609.81 by a demand draft in favour of Respondent No. 2 at New Delhi. By letter dated 24th December 1991 Annexure 4(1) addressed to Respondent No. 1, the consumer enclosed the demand draft as desired and requested Respondent No. 1 to deliver the vehicle at Bhopal. On 30.3.1992 Respondent No. 1 obtained delivery of the car at Gurgaon from Respondent No. 2 and invoiced it the same day in the name of the consumer showing the price (Ex show room) of vehicle inclusive of all taxes as Rs. 1,70,886.73 and after adjusting the amount of Rs. 1,69,609.81 paid by the consumer to Respondent No. 2, indicated the balance amount of Rs. 1276.92. THE consumer was asked by Respondent No. 1 to get the car insured so that it could be brought to the show room of Respondent No. 1 at Bhopal for delivering it to the consumer as desired by him. THE consumer accordingly got the vehicle insured with United India Assurance Co. Ltd. vide Policy No. 6/9341/387 92-93 dated 28th April 1992, effective for a period of one year and sent the copy of the policy to Respondent No. 1. THE name of the insured as disclosed in the certificate of insurance Annexure 6 is that of the consumer and it is also disclosed in that certificate that the car is hypothecated with the New India Assurance Company Ltd., the employer of the consumer at the material time. On 18.9.1992 the consumer sent a letter to Respondent No. 1 stating that he had been awaiting delivery of the car at Bhopal and demanded immediate delivery of the car alongwith interest at 18% p.a. on the total amount paid by the consumer, from the date of payment till the date of the delivery of the car. In reply to this letter, the consumer was informed by a letter dated 29.9.1992 Annexure 5, that his car was delivered by Respondent No. 2 to Respondent No. 1 at Gurgaon on 30.3.1992, that the consumer was advised by Respondent No. 1 to get his car insured so that it could be brought at Bhopal, that the consumer accordingly got his vehicle insured and sent a copy of the insurance policy dated 28.4.1992 to Respondent No. 1 and that while the car was being brought by an employee of Respondent No. 1 to Bhopal via Indore it met with an accident on 26.7.1992 and that the accidented vehicle was kept in the workshop of Respondent No. 1 at Indore. It was stated in that letter that the consumer was informed at Bhopal about this accident with a request to send insurance Surveyor for inspecting the car so that the car could be repaired but the consumer had not taken any action in the matter. THE

consumer was also informed by that letter that the liability of Respondent No. 1 commenced only when the vehicle was received in the show room of Respondent No. 1 and that Respondent No. 1 was not in any case responsible if the vehicle had met with an accident on way before reaching the show room. THE consumer was further informed that he should immediately take delivery of the accidented vehicle kept in the workshop of Respondent No. 1 at Indore failing which he would be liable to pay garage charges. THE consumer by his reply dated 5.11.1992 Annexure 7 contended that as he had not acquired any insurable interest in the car he could not claim any amount from the Insurance Company and demanded immediate delivery of a brand new car as the vehicle in question was extensively damaged, along with expenses and compensation. On 8.1.1993 Respondent No. 1 sent a letter Annexure 8 to the consumer informing him" as under:-

".....We are again giving you very clearly three options for your vehicle:- 1 As a special case Maruti Udyog Ltd. have agreed to assemble a new vehicle for you and will give you the same at current existing prices. This will be subject to the following:. (a) Present vehicle will be repaired under your insurance and will be sold to new customer. (b) You will have no lien on the present vehicle and interest will be paid to you till the date of billing of your earlier vehicle from Maruti Udyog Ltd. 2 Your existing vehicle can be repaired under your insurance policy and vehicle can be made fully road worthy as confirmed by New India Sr. Surveyor, Regional Manager of Maruti Udyog Ltd., Regional Service Representative of Maruti Udyog Ltd., who are the most competent technical persons in the matter. 3 Refund of payment to you along with the interest till the date of billing."

THE consumer was not agreeable to exercise any option as suggested by Respondent No. 1 as he was insisting on delivery of a new car with compensation. He approached the complainant which is a voluntary consumer association registered under the M.P. Societies Registration Act, 1973. With a view to espouse the cause of the consumer, the complainant has filed this complaint under the Act against the respondents, alleging that in the circumstances of the case, failure to deliver the car to the consumer after having received full price thereof, amounts to an Unfair Trade Practice and deficiency in service on the part of the respondents and therefore respondents Nos. 1 and 2 be directed to arrange for supply of a new and sound Maruti 800 handicapped control car - TRD Model to the consumer without demanding any extra charge from the consumer, along with costs amounting to Rs.. 43,488/- and compensation amounting to Rs. 2,00,000/-.

The claim is resisted by the respondents. It is contended that Respondent No. 2 having received the price of the car from the consumer through Respondent No. 1, had delivered the car to Respondent No. 1 against C Form at Gurgaon on 31.3.1992, that the said car was sold by Respondent No. 1 to the consumer by invoicing it on the same day and that the consumer had thus become the owner of the vehicle on 31.3.1992 when the property in the goods passed to him. There seems to be a typographical error in the date 31.3.1992 mentioned in the reply. It should be 30.3.1992 because the invoice is of that

date and in the letter dated 29.9.1992 Annexure 5 sent by Respondent No. 1 to the consumer, the date of delivery by Respondent No. 2 is mentioned as 30.3.1992. It is further contended in the reply that as the vehicle met with an accident while in transit from Gurgaon to Bhopal for delivering it to the consumer, the respondents are not liable for any loss or damage caused to the vehicle as a result of any accident. It is also contended that in any event, the reliefs sought by the complainant fall outside the scope of Section 14(1) of the Act and the remedy of the consumer, if any, is to approach a Civil Court.

In view of the contentions raised by the parties, the following questions arise for consideration:-

(i) Whether the property in the vehicle passed to the consumer at Gurgaon on 30.3.1992 ? (ii) Whether the respondents have adopted any Unfair Trade Practice or whether there has been any deficiency in service on the part of the respondents ? (iii) Whether the consumer is entitled to any relief under the Act ?

3. THE first question for consideration is whether the property in the goods passed to the consumer at Gurgaon as alleged by the Respondents. It was contended on behalf of the complainant that as per terms of the contract, the car was required to be delivered to the consumer at Bhopal and till such delivery, the property in the goods did not pass to him. THEre is however no document on record evidencing terms of contract entered into between the parties. THEse terms will have to be gathered from the correspondence exchanged between the parties and their conduct. At the time of arguments, learned Counsel for the complainant referred to a form of an application Annexure "A" required to be filled in for purchase of Maruti 800 handicapped car from Respondent No. 2 and the instructions and terms of sale set out in the note accompanying that application form. Our attention was invited to the note stating that normally delivery would be made only through the dealer mentioned in the application form and that Respondent No. 2 would not deliver vehicles in a city different from that in which delivery had been sought. THE complainant did not take steps to bring on record the application form submitted by the consumer. THE complainant has however produced acceptance letter dated 19.7.1991 Annexure 2 sent by Respondent No. 1 to the consumer intimating the consumer that his booking for the handicapped control car had been accepted by their principals Respondent No. 2, that the cost of car, delivery ex-factory would be Rs. 133,178.18 and that after adjusting the amount of Rs. 10,000/- deposited by the consumer, the consumer was required to make balance payment amounting to Rs. 1,23,178.18 by a demand draft in favour of Respondent No. 2 payable at New Delhi. It was further stated in that letter that the model of the car sought by the consumer was not in regular production of Respondent No. 2 and that the actual delivery period would be communicated to the

consumer after remittance of the balance payment to Respondent No. 2. THE consumer was further informed that the price quoted was subject to change and that the consumer would be required to pay the price ruling at the time of the delivery. Subsequently, the price of the car was increased to Rs. 1,69,609.81 and the balance payment amounting to Rs. 1,59,609.81 was made by the consumer by a demand draft alongwith his letter dated 24.12.1991 Annexure 4(i). By that letter the consumer acknowledged the receipt of the letter dated 19.7.1991 Annexure 2. He did not indicate that he was not agreeable to the term regarding delivery Ex-factory Gurgaon stipulated by Respondent No. 2. Section 33 of the Sale of Goods Act provides that delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf. THE consumer had made a request to Respondent No. 1 to arrange to deliver the vehicle at Bhopal. THE consumer had thus impliedly authorised Respondent No. 1 to hold the car on his behalf after obtaining delivery of the car from Respondent No. 2 at Gurgaon. This is further established by the subsequent conduct of the consumer. On coming to know that the car had been delivered by Respondent No. 2 to Respondent No. 1 at Gurgaon, he got it insured in his name as required by Respondent No. 1 and arranged to send to Respondent No. 1 a copy of the insurance policy to enable Respondent No. 1 to bring the car at Bhopal. That policy was effective for a period of one year, and incorporated the fact that the car had been hypothecated with the New India Assurance Company Ltd., the employer of the consumer. This conduct of the consumer is inconsistent with the stand now taken up before us on behalf of the complainant that the consumer had not become owner of the car as the same had not been delivered to him at Bhopal. Section 23 of the Sale of Goods Act lays down that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer and that such assent may be expresed or implied and may be given either before or after the appropriation is made. In the instant case, the consumer had agreed to accept delivery of the car ex-factory at Gurgaon, the consumer had impliedly authorised Respondent No. 1 to hold the car on his behalf after obtaining delivery of the car from Respondent No. 2 at Gurgaon, the consumer had taken out policy in his name for transporting the car from Gurgaon to Bhopal and the consumer had hypothecated the car with his employer. All these facts lead to the conclusion that the consumer had become owner of the car when it was delivered by Respondent No. 2 to Respondent No. 1 at Gurgaon and that the property in the vehicle had passed to the consumer at Gurgaon. Under the circumstances, the grievance of the complainant that despite payment of full price, the vehicle has not been yet delivered to the consumer by Respondent No. 2 in terms of the contract of sale entered into by the consumer with Respondent No. 2 is not well founded. Respondent No. 2 having delivered the vehicle to Respondent No. 1 on behalf of the consumer, at Gurgaon, cannot be held liable for non-delivery as urged on behalf of the complainant. In this view of the matter the question as to adoption of any Unfair Trade Practice or deficiency in service by Respondent No. 2

does not arise. THE claim for delivery of the car and for compensation made by the complainant against Respondent No. 2 cannot therefore be upheld.

Now so far as claim against Respondent No. 1 is concerned, it was not disputed before us on behalf of Respondent No. 1 that Respondent No. 1 had agreed to deliver the car to the consumer at Bhopal. For that purpose, Respondent No. 1 obtained delivery of the car at Gurgaon on 30.3.1992 from Respondent No. 2 and was holding it on behalf of the consumer as a bailee for delivering the same to the consumer at Bhopal. Explanation to Section 148 of the Contract Act lays down that if a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee and the owner becomes the bailor of such goods although they may not have been delivered by way of bailment. Learned Counsel for Respondent No. 1 contended that in case of bailment the consumer would not be entitled to any relief under the Act and his remedy if any way to approach a Civil Court. The contention cannot be upheld. Respondent No. 1 had agreed to render service to the consumer by undertaking to transport his car to Bhopal. Respondent No. 1 was not going to render these services gratuitously. That is also not the contention advanced on behalf of Respondent No. 1 and rightly so. In the invoice dated 30.3.1992 made out by respondent, even though the consumer had paid the full price of the car to Respondent No. 2, a balance of Rs. 1,276.92 has been shown to be payable by the consumer to Respondent No. 1 for effecting delivery of the car at the show room of Respondent No. 1 at Bhopal. In our opinion, if a consumer is able to establish deficiency in service on the part of the bailee he would be entitled to seek relief under the Act. In 1992 (2) CPR 705 (P.S.N. Rao v. Mis. Venire Carriers and Ors.) the National Commission has observed as follows:-

"- - - -as the complainant"s Maruti Car has suffered damage while it was in the custody of the carrier, namely, the 1st respondent, which was in the position of a bailee who had undertaken to transport the vehicle from Bhubaneswar to Delhi, it was the undoubted responsibility of the 1st respondent to get the vehicle repaired and put it back in perfect road-worthy condition."

In the instant case it is not disputed that the car was not delivered by Respondent No. 1 to the consumer at Bhopal as it met with an accident on way to Bhopal. There was thus deficiency in service on the part of Respondent No. 1 and the consumer would be entitled to obtain relief under the Act.

4. IT was urged on behalf of Respondent No. 1 that as the car was insured by the consumer, he should have approached the Insurance Company and lodged his claim. On behalf of the complainant it was contended that the consumer could not have approached

the Insurance Company as he had no insurable interest. IT is difficult to appreciate this contention. The consumer had become owner of the car as the property in the goods had passed to him at Gurgaon and that is why he had taken out an insurance policy effective for a period of one year from 28.4.1992. But failure of the consumer to lodge a claim with the Insurance Company cannot absolve Respondent No. 1 of their liability to deliver the car to the consumer at Bhopal. Under Section 161 of the Contract Act the responsibility of the bailee to deliver the goods at the proper time is absolute. Having agreed to render service to the consumer by effecting delivery of the car at Bhopal, Respondent No. 1 could have made provision for insurance to cover the transit risk. The car met with an accident while it was being driven by the mechanic of Respondent No. 1, as admitted by Respondent No. 1 in its letter dated 29.9.1992 Annexure 5 addressed to the consumer. A bailee is liable for damage caused by the negligence of his servant acting in the course of employment in regard to the thing bailed. In the circumstances of the case, the responsibility of Respondent No. 1 to deliver to the consumer at Bhopal the car, possession of which was taken by Respondent No. 1 at Gurgaon, was absolute and Respondent No. 1 cannot be absolved of their obligation to deliver the car to the consumer at Bhopal because the consumer failed to lodge a claim with the Insurance Company.

It was urged that in all fairness, though legally not bound to do so. Respondent No. 1 had asked the consumer to exercise one of the three options indicated in letter dated 8.1.1993. But the consumer cannot be held disentitled to any relief because he failed to exercise one of three options offered by Respondent No. 1 to the consumer by letter dated 8.1.1993. The consumer was not legally bound to opt for one of the three options offered by Respondent No. 1. He is entitled to relief under the Act on account of deficiency in service by Respondent No. 1.

The next question for consideration is what relief can be granted to the consumer. According to Respondent No. 1, the accidented car can be repaired and made fully road-worthy, as stated in their letter dated 8.1.1993 Annexure 8 addressed to the consumer. It was however contended on behalf of the complainant that the car was completely smashed and beyond repairs. We were informed at the Bar that production of Maruti handicapped cars has been discontinued by Respondent No. 2. Hence Respondent No. 1 cannot be directed to deliver a new handicapped Maruti car to the consumer as sought by the consumer. Under the circumstance, it would meet the ends of justice if Respondent No. 1 is directed that within two months from the date of the communication of this order, Respondent No. 1 should get the repairs to the car carried out by a workshop run by Respondent No. 2 and to carry out all works that are necessary to make the car suitable for the purpose for which it was designed and to put the car in perfect roadworthy condition in case it is capable of being so repaired. Respondent No. 1 shall obtain a certificate from Respondent No. 2 that the car has been repaired satisfactorily and is fit for being used for the purpose for which it was designed and is in perfect road-worthy condition, along with a certificate of fitness from the prescribed

authority under Section 56 of the Motor Vehicles Act, 1988. In the event of obtaining such certificates, Respondent No. 1 shall deliver the repaired car to the consumer. The consumer would also be entitled to receive from Respondent No. 1 till the date of delivery, compensation at the rate of Rs. 2,500/- per month from 10.5.1992, by which time the car should have been delivered to the consumer at Bhopal as Respondent No. 1 had obtained its delivery at Gurgaon on 30.3.1992 and had received the policy of insurance dated 28.4.1992 sent by the consumer. In case Respondent No. 1 is unable to obtain certificates of fitness from Respondent No. 2 and the prescribed authority under the Motor Vehicles Act, 1988, the consumer would be entitled to receive from Respondent No. 1 within three months from the date of communication of this order, the amount of Rs. 1,69,609.81 paid by the consumer as price of the car alongwith interest at the rate of 18% p.a. on that amount from 24.12.1991 when the amount was paid by the consumer till the date of payment, provided the consumer furnishes a written undertaking attested by a Notary that the car is free from any encumbrance alongwith a certificate from New India Assurance Co. Ltd. to that effect. The undertaking shall also include a declaration by the consumer that he would have no title to or right or interest in the accidented vehicle and that Respondent No. 1 would be at liberty to dispose it of in any manner it likes.

5. CONSEQUENTLY this complaint is partly allowed. The claim of the consumer against Respondent No. 2 is dismissed. In the circumstances of the case Respondent No. 2 shall bear its own costs. The claim of the consumer against Respondent No. 1 is allowed to the extent indicated as follows:-

"Respondent No. 1 shall within 2 months from the date of the communication of this order get the accidented car repaired at its cost in a workshop run by Respondent No. 2, so as to render the said car suitable for the purpose for which it was designed, in perfect road-worthy condition, in case the said car is capable of being so repaired and Respondent No. 1 shall thereafter deliver the said car to the consumer alongwith a certificate from Respondent No. 2 that the car has been repaired satisfactorily and is fit for being used for the purpose for which it was designed and is in perfect road-worthy condition and a certificate of fitness from the prescribed authority at Bhopal under Section 56 of the Motor Vehicles Act, 1988. Respondent No. 1 shall also pay to the consumer compensation at the rate of Rs. 2,500/- p.m. from 10.5.1992 till the date of delivery along with costs which we assess at Rs. 5,000/-. In case Respondent No. 1 is unable to obtain certificate of fitness from Respondent No. 2 and the prescribed authority at Bhopal under Section 56 of the Motor Vehicles Act and deliver the repaired car to the consumer within 2 months from the date of communication of this order, Respondent No. 1 shall within 3 months from the date of the communication of this order pay to the consumer the sum of Rs. 1,69,609.81 along with interest thereon at 18% p.a. from 24.12.1991 till the date of

payment and costs amounting to Rs. 5,000/-, provided the consumer furnishes a written undertaking to Respondent No. 1, attested by a Notary, that the consumer would have no title to or right or interest in the accidented vehicle and that Respondent No. 1 would be at liberty to dispose it of in any manner it likes and that the accidented car is not subject to any charge and is free from any encumbrance along with a certificate to that effect from the New India Assurance Company Ltd. with whom the car was hypothecated, as mentioned in the policy of Insurance Annexure 6."

Complaint partly allowed.