

(2003) 07 NCDRC CK 0070

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

HARI SINGH

APPELLANT

Vs

PAL-PEUGEOT LTD.

RESPONDENT

Date of Decision: July 24, 2003

Citation: 2003 4 CPJ 331

Hon'ble Judges: M.A.A.Khan , Ratan Prakash J.

Final Decision: Complaint allowed

Judgement

1. SHRI Hari Singh, complainant has filed this complaint to seek a direction against the O.Ps. to pay to him an amount of Rs. 4,95,750/- with interest @ 18% p.a. from 15.1.1997; Rs. 2,000/- p.m. for the inconvenience; Rs. 2,90,000/- as compensation as disclosed in para 15 of the complaint; Rs. 5,900/- as cost of starting switch and Rs. 10,000/- as cost of litigation for supplying him a defective Pal-Peugeot 309 AC (petrol car).

2. FACTS relevant for disposal of this complaint in brief are that on 23.12.1996, he booked a Pal-Peugeot Car 309 AC (petrol) after paying an advance of Rs. 25,000/-. In consequence of it, O.P. No. 1 PAL-PEUGEOT LTD. allotted him a priority No. 0035/00053 and intimated to pay a further amount of Rs. 4,70,750/-. The complainant paid an amount of Rs. 3,34,000/- and Rs. 1,47,750/- through Bank Drafts and thus paid a total amount of Rs. 4,95,750/- against the cost of the aforesaid vehicle to O.P. No. 1. The aforesaid car was delivered by O.P. No. 2 to the complainant on 15.1.1997 along with a Warranty Card dated 15.1.1997 (Ex. 7).

It is the grievance of the complainant that at the time of taking the delivery of the car, a "noise" was noticed by him and he refused to take the delivery of the car. One Shri Dayanand Kasliwal, owner of O.P. No. 2; who was known; persuaded him that this "noise" coming out from the car would disappear after running 2000-4000 kms. The complainant felt assured and took delivery of the car on the persuasion of the owner of O.P. No. 2. The aforesaid noise in the vehicle however did not disappear and inspite of repeated reminders sent, nothing was done by the O.Ps. It is further the case of the complainant that on 26.11.1997 one Shri V.C. Gharge, Regional Service Manager of PAL-PEUGEOT Ltd., Delhi inspected the car in question and found that there is "noise" in the engine and the AC is also less effective and he got the car kept under observation. Thereafter nothing was done by the O.Ps. The complainant wrote letters to O.P. No. 2 on 4.12.1997 and 8.1.1998 and informed the O.P. No. 1 through telephone also that after the inspection of the vehicle by the Service Manager, nothing has been done. By letter dated 10.2.1998 O.P. No. 1 informed the complainant that they are sending their Service Engineer for the check-up of the vehicle. In the month of May, 1998 one Shri Shashi Kant Nalavadi, Service Engineer of O.P. No. 1 from Mumbai came to check-up the vehicle. The Service Engineer found that the "noise" which is coming out of the engine is not of the "alternator" but may be of water body. He promised the complainant that the water body would be changed soon and the Airconditioner would also be set right. He further promised that in case the aforesaid defect is not cured, he would be supplied a new car. On 3.7.1998, the Service Engineer of O.P. No. 2 replaced the water body which was received from Mumbai still the "noise" of the engine did not cease. The complainant still made repeated efforts through telephone and letters alleging that since there is manufacturing defect in the vechicle in question and the defect of "noise" in the engine has not been rectified, his vehicle be replaced with a new vehicle yet the O.Ps. neither replaced the vechile nor paid the cost of the vehicle realised from the complainant.

The complainant, therefore, has claimed not only the cost of the vehicle paid by him to the O.Ps. but also further amounts as disclosed above for mental agony, physical discomfort, financial loss and cost of litigation, etc.

3. THIS complaint, has been opposed by only O.P. No. 2 since despite notice none has put in appearance on behalf of O.P. No. 1. The stand of the O.P. No. 2 (Dealer) has been that the allegations made by the complainant in his complaint are without any foundation. There is no manufacturing defect in the vehicle supplied to the complainant; the complainant is neither entitled for replacement of the vehicle nor to get the refund of the cost of the vehicle more so when the Warranty has been

given by O.P. No. 1 being its Manufacturer and not by him and that since after 8.12.1997 he has ceased to be a Dealer of O.P. No. 1 hence the complainant is not entitled to seek any relief against the answering O.P. No. 2 and that the complaint be dismissed with costs.

We heard the learned Counsel for the parties at great length and have perused the material available on the record.

4. IT is admitted position that the vehicle in question was manufactured by O.P. No. 1 and was sold to the complainant by its Dealer O.P. No. 2 on 15.1.1997 for an amount of Rs. 4,95,750/- IT is also made out that right from the very inspection i.e. from the time of purchase and taking the delivery of the vehicle, the complainant and O.P. No. 2 noticed that a "noise" is coming out from the engine of the vehicle. IT is also made out that after repeated efforts made by the complainant; one Shri V.C. Gcharge, Regional Service Manager of O.P. No. 1 inspected the vehicle on 26.11.1997 and noticed that a "noise" is coming out from the engine of the vehicle in question and that its AC is also less effective. IT is also not denied by the O.Ps. that after incessant efforts of the complainant, O.P. No. 1 sent another Service Engineer Shri Shashi Kant Nalavadi from Mumbai in May, 1998 who also found that a "noise" is coming out of the engine and that it is not of the alternator but suspected to be of water body. He accordingly advised replacement of the water body which was also got done by O.P. No. 2 on 3.7.1998. Still the "noise" of the engine persisted and did not cease.

Aggrieved the complainant had no option but had to file this complaint to recover the amount not only paid by him as cost of the vehicle but also for compensation, etc.

It is argued by the learned Counsel for the O.P. No. 2 that since O.P. No. 2 had ceased to be the Dealer of O.P. No. 1 w.e.f. 8.12.1997, he is not liable for any defect in the vehicle as alleged by the complainant. If anyone is liable, it is O.P. No. 1 and not; the Dealer. In support of this argument, the learned Counsel for the O.P. No. 2 has mainly relied upon the decision of Hon"ble the Supreme Court in the case of Hindustan Motors Ltd. & Anr. v. N. Siva Kumar & Anr., (2000) 10 SCC 654; Tata Engineering & Locomotive Co. Ltd. & Anr. v. M. Moosa, 1994 (3) CPR 395, and Mahindra and Mahindra Ltd. v. B.G. Thakurdesai & Anr., II (1993) CPJ 225 (NC). On the basis of the decision in Mahindra and Mahindra Ltd. (supra), it is urged that since defect in the engine was not a manufacturing defect and all possible defects were removed from the vehicle in question, the complainant cannot ask for replacement or cost of the vehicle. On the basis of the decision of Hon"ble the

Supreme Court in the case of Hindustan Motors Ltd. & Anr. (supra), it is urged that when the manufacturer had stopped the manufacture of the said models of the vehicle, the Dealer cannot be held responsible for the supply of the vehicle with alleged defect in the engine and that it is only the Manufacturer i.e. O.P. No. 1 who could be directed to pay the cost of the vehicle to the complainant and not the Dealer. On the basis of the decision in Tata Engineering and Locomotive Co. Ltd. & Anr. (supra) by Hon"ble the National Commission, it is urged that when it has not been established that there was any manufacturing defect in the vehicle in question and all noticeable defects were removed, the refund of the price of the vehicle in question cannot be allowed; but only a token compensation could be paid.

5. WE have carefully gone through the aforesaid three decisions relied upon by the learned Counsel for the O.P. No. 2.

6. THE argument of the learned Counsel for the Dealer is that since manufacturing defect in the vehicle has been established, the Dealer is neither liable to refund the cost of the vehicle nor to pay any compensation as demanded by the complainant. THE question is what is meant by the words "manufacturing defect" in relation to the vehicle in question. THE word "manufacturing" has been defined in Oxford Advanced Learners Dictionary, New Edition as "the effect of making things by industrial processes" and the word "defect" has been defined as a "fault" and in relation to a car, as "mechanical defect in a car". Reading the two words - "manufacturing defect" together it means "a mechanical defect in the car which has been manufactured by industrial processes". It cannot be denied that O.P. No. 1 is the manufacturer of the vehicle in question which manufactures cars through the industrial processes at a large scale and if any defect is noticed in the manufacture of such goods as in the case of a car, it would relate to a mechanical defect. It is to be noticed that not only one Shri V.C. Gcharge, the Regional Service Manager of the manufacturer Co. from Delhi had inspected the vehicle on 26.11.1997 and found that a "noise" is coming out of the engine but another Service Engineer of O.P. No. 1, Shri Shashi Kant Nalavadi from Mumbai had come and physically inspected and checked the vehicle in question in the month of May, 1998; who has also found that a "noise" is coming out from the engine of the car which is not of the alternator but according to him probably of the water body. At his advice, therefore, the water

body as supplied by the manufacturer was replaced on 3.7.1998, still the "noise" coming out of the engine did not terminate. This is evident from the record. This all goes to show that two personnel; one Service Manager and a Service Engineer of the O.P. No. 1 though did not say so in many words that it is a manufacturing defect in the vehicle but both of them were unanimous in their finding that the "noise" is coming out of the engine of the car in question. Since the car is manufactured by O.P. No. 1 through industrial processes and the engine of the car is most important constituent of the car, if any noise is coming out of the engine of the car it could be nothing but a defect in its manufacture which is the most important constituent of the car without which the car cannot be propelled. We, therefore, are of the considered view that there has been a manufacturing defect in the car right from the very date of delivery of the car i.e. 15.1.1997 when it was supplied by O.Ps. to the complainant, which could not be removed despite physical inspections made by the experts of O.P. No. 1. THE reliance, therefore, placed by O.P. No. 2 on the decision of Tata Engineering and Locomotive Co. Ltd. & Anr. (supra), is of no avail since in that case there were no manufacturing defect in the car in question but in the present case, there has been a manufacturing defect right from the first day of the sale of it to the complainant. Further no advantage can be obtained by O.P. No. 2 from the decision of Mahindra and Mahindra Ltd. (supra), of Hon"ble the National Commission; since when it is urged here that there is no manufacturing defect in the vehicle how could the O.P. take advantage of a situation contrary to it. In the instant case, the defect in engine has been the manufacturing defect and it could not be rectified either by the manufacturer or by the Dealer; O.P. No. 2. Moreover in the present complaint, the complainant has not sought replacement of the vehicle but has asked to be refunded the cost of the vehicle.

Coming now to the reliance placed by O.P. No. 2 on the decision of Hon"ble the Supreme Court in the case of Hindustan Motors Ltd. & Anr. (supra), it is clear that when a manufacturing defect is found in the goods sold to a customer through a Dealer, it is the manufacturer who could be held liable for the supply of defective goods. The question remains whether the Dealer (in the present case O.P. No. 2) can also be held liable in such a case. In this regard, it may be observed that the defect in the engine has been found by the Regional Service Manager and Service Engineer of O.P. No. 1 i.e. the manufacturer. The vehicle in question is unquestionably a product manufactured through industrial processes of O.P. No. 1. The Dealer O.P. No. 2 does not come in picture so far as the manufacturing processes of the vehicle in question is concerned, but in any case he is the person through whom the complainant had entered into an agreement to sell the vehicle in question which has been manufactured by O.P. No. 1. The privity of contract is between the complainant and manufacturer through the dealer i.e. O.P. No. 2. The Dealer, therefore, in our opinion is an agent of his Masters i.e. O.P. No. 1. Though the O.P. No. 2 has taken a stand that the relationship between him and the manufacturer has been; as between principal to principal basis, but we are unable to accept this stand of O.P.

No. 2 since sufficient material has not been placed on this point. The denial of liability by O.P. No. 2 on the basis that it has ceased to be a dealer on behalf of O.P. No. 1 since 8.12.1997 is also not acceptable more so when the water body of the vehicle in question was replaced through the agency of O.P. No. 2 and that too in May, 1998. It, therefore, cannot be said that the relationship of Master and an Agent between Dealer (O.P. No. 2) and the Manufacturer (O.P. No. 1) has come to end before the month of May, 1998.

In any view of the matter, we are of the firm opinion that though in the present case, the Manufacturer i.e. O.P. No. 1 is primarily liable to refund the cost of the vehicle to the complainant but the O.P. No. 2 also cannot escape from its liability as an agent of O.P. No. 1.

7. THE question now remains as to whether besides refund of the cost of the vehicle to the complainant; the complainant is also entitled for any compensation as sought for by him in his complaint ? It is established that the complainant has purchased the vehicle on 15.1.1997 and till May, 1998 the defect in the engine could not be removed by the O.P.s. We, therefore, are of the view that in the interest of justice and for all the mental agony and physical discomfort borne by the complainant, a token amount of Rs. 25,000/- would meet the ends of justice.

Consequently, the complaint of Shri Hari Singh is allowed. It is directed that O.P. No. 1 shall refund the cost of the vehicle i.e. Rs. 4,95,750/- to the complainant within a period of two months from the date of this order or from the date of return of the vehicle in question by the complainant to the Dealer O.P. No. 2 who would hand it over to O.P. No. 1 with interest @ 9% p.a. w.e.f. 15.1.1997 till payment. The O.P. No. 1 shall also pay to the complainant an amount of Rs. 25,000/- as compensation for mental agony, physical discomfort and financial loss, etc. as also Rs. 5,000/- as cost of litigation. Primarily the aforesaid amounts shall be paid by the Manufacturer O.P. No. 1 to the complainant failing which the complainant shall be at liberty to realise the aforesaid amounts from O.P. No. 2 (Dealer). Order accordingly. Complaint allowed.