

(1992) 07 NCDRC CK 0013

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

BINDA PRASAD
MANDAL

APPELLANT

Vs

MANAGING DIRECTOR
EICHER TRACTOR
LIMITED

RESPONDENT

Date of Decision: July 24, 1992

Citation: 1993 1 CPJ 315 : 1993 1 CPR 290

Hon'ble Judges: B.N.Sinha , K.P.Sinha J.

Final Decision: Complaint dismissed

Judgement

1. THIS case has been filed by the complainant against the opposite parties with the allegations mentioned hereinafter. The complainant purchased Eicher Sona Tractor No. 79210600127, having engine No. 58128201589, Body No. 352 for Rs. 91,073 + 75,000/- from the opposite party No. 2 - who is its dealer at Bhagalpur in October, 1987 with a guarantee of one year. But the engine of the tractor ceased to function and complainant informed the O.P. with regard thereto. The dealer examined the Tractor and replaced its engine by Engine No. 50228202132 and assured the complainant that the engine is a new one. But only after three months of its replacement the engine again became defective and again the O.P. No. 2 informed the dealer who got it examined by a mechanic and got Linear, Piston and several other parts valued at Rs. 4,828.25 as per bill of the O.P. were replaced and the complainant paid Rs. 3,400/- against this bill. The dealer, O.P. No. 2 assured the complainant that this amount paid by the complainant would be refunded after information to opposite party No.1, but the said amount was not refunded to the complainant as yet. Again the engine became defective and the opposite party No. 2 got it examined by a Mechanic and some parts valued at Rs. 2000/- were replaced. The complainant again paid this amount to opposite party No. 2. Again one month thereafter the engine became defective and the mechanic of the company who examined the engine informed that the defect would be removed only after an

investment of Rs. 20,000/- as the engine was not functioning at all. The complainant has alleged that the Tractor supplied to him was worst in quality, potency, and below the standard prescribed by the company and the company also realised that the Model supplied to the complainant was bad and hence the company stopped production of that model and the company had remodelled the same. The complainant has alleged that he purchased the Tractor through State Bank of India and as the Tractor was not functioning his agriculture suffered and he sustained damage of Rs. 6,000/- on that account and the interest payable to the Bank was increasing every day. The complainant claims for refund of purchase money along with interest payable thereon and damages as stated above.

2. BOTH the O.P. Nos. 1 & 2 filed their respective written version of the case. BOTH the parties challenged the maintainability of the case. The case of the O.P. 1 that the complainant never contacted O.P. No. 1 and that no letter was sent to the O.P. No. 1 either by the complainant or the local dealer with regard to the defective engine and that the Eicher Sona Tractor is one of the tractors which has been tested by the Tractor Training and Testing Centre Budhi, (M.P), which is a Government of India institution and has been approved and that the present case has been filed by the complainant only to digest the loan of the Bank towards which the complainant paid nothing.

The dealer in his version has admitted that the complainant purchased the Eicher Sona Tractor which was installed on 16.11.87 with a warranty of one year or 1000 working hours from the date of installation whichever was earlier, but the complainant purchased the tractor for commercial purposes. Further case of the O.P. No. 2 is that in the month of May, 1988 i.e. after more than 6 months of its use the complainant informed that the Engine of the Tractor was not working smoothly and on 8.9.88 O.P. No. 2 got the engine replaced by new engine to the entire satisfaction of the complainant for which the complainant issued a letter to him indicating his satisfaction and the complainant thereafter never complained either orally or in writing regarding the defect in working of the Tractor. His further case is that the parts worth Rs. 4828.25 were never replaced by him nor he received Rs. 3,400/- from the complainant nor he has issued any bill in this regard and therefore question of refund does not arise. It has been further said that the allegation of the complainant that the mechanic of the company examined the engine and informed that defect would be removed only after investment of Rs. 20,000/- is completely false and baseless. It has been further submitted that the filing of the complaint was done on 12.5.90, i.e. after more than one year eleven months from the date of replacement and this fact alone falsifies the entire case of the complainant and the

present case has been filed by the complainant only to digest the bank loan which has not been paid by him to the bank. The dealer has annexed Photostat copy of the letter issued by the complainant on 8.6.88 stating the replacement of the engine of the tractor to his satisfaction.

The complainant examined himself in the case and he stated the facts mentioned in the complaint petition and he also stated that he got the tractor examined by one Shri Sanyasi Pandey who told him that even on investing Rs. 20,000/- the tractor will not be perfectly in order. But most surprisingly this is quite contrary to the averments made by the complainant on separate sheet of paper enclosed with the complaint filed by him on proforma in which he has stated that the mechanic of the company examined the engine and he informed him that it will require investment of Rs. 20,000/- to remove the defects in the engine. The complainant has not examined that Engineer Shri Sanyasi Pandey nor any other Engineer in support of his case. Nor any receipt has been filed on behalf of the complainant to indicate that Rs. 3,400/- and Rs. 2,000/- were paid by him to the dealer O.P. No. 2 nor any paper has been proved to show that the dealer had given him a bill for Rs. 4,828.25 in respect of the parts replaced by him. In the absence" of these evidence there is no evidence at all that the tractor ever became defective after the O.P. No. 2 replaced the engine thereof and that the complainant paid Rs. 3,400/- and Rs. 2,000/- to O.P. No. 2 on account of different necessary repairs made in the tractor.

3. MOREOVER, it has been admitted by the complainant in his evidence that besides cultivating his own land he also let out hire the tractor to others for cultivation and for carrying goods and he charged for Rs. 60/- per hour. Hence the ground taken on behalf of O.P. No. 2 that the tractor was purchased by the complainant for commercial purposes cannot be said to be baseless and this also disentitle the complainant to any relief under the Consumer Protection Act, 1986.

For these reasons we find and hold that the complainant is not entitled to any relief and his case is dismissed. The parties will bear their own costs. Complaint dismissed.