

**(1994) 01 NCDRC CK 0034**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

V.R. REGHUTHAMAN

APPELLANT

Vs

Kerala Automobiles Ltd.

RESPONDENT

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**Date of Decision:** Jan. 22, 1994

**Citation:** 1995 2 CPC 309 : 1995 2 CPJ 273 : 1995 3 CPR 20

**Hon'ble Judges:** P.K.Shamsuddin , C.G.Sethu Lakshmi , K.Balakrishnan Nair J.

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**Judgement**

1. THE complainant purchased an autorickshaw manufactured by the opposite party. He got delivery of the vehicle, 1989 model with Engine No. 000448-KAL 3 Chasis No. A511 on 9.2.89. THE vehicle was purchased under hire purchase agreement with Kerala State Financial Enterprises Ltd. Thrissur and entered as such in the registration certificate. THE value of the autorickshaw was Rs. 24359.48 plus tax. Beside this the complainant paid Rs. 4293.70 for obtaining gate pass from the factory of the opposite party.

2. THE complainant was plying the auto as taxi. But after two months, the vehicle started engine trouble and would not move more than a kilometer at a stretch. He informed about the trouble to the opposite party. THE opposite party directed him to replace certain parts and this process continued for some time. THE spare parts were purchased from the opposite party, and he had to spend a large amount to get the vehicle repaired. But after all these, efforts to make the vehicle in running condition proved futile. THE complainant could not ply the vehicle as a taxi and he is in arrears of huge amount to Kerala Financial Enterprises.

According to the complainant the mechanical parts alligned in the autorickshaw were sub-standard and they have been defectively manufactured and assembled

unscientifically. Moreover the engine fitted to the vehicle is 200 C.C. instead of 175 C.C. which resulted in over heat to the Engine. The complainant requested the opposite party to replace the Engine. But the opposite party adamantly refused to do that. The conduct of the opposite party caused great financial loss, mental agony and denial of means of livelihood to the complainant and he filed this complaint, claiming a total sum of Rs. 1,47,700 which include the value, other expenses and compensation.

The opposite party raised preliminary objection regarding the maintainability of the complaint. According to them it requires, technical and expert's evidence to determine the complaint. But this Commission overruled the preliminary objection and decided to take up the matter.

3. THE opposite party filed their version stating that the complaint is not maintainable. THE complainant is not a consumer since the purchase of the autorickshaw was for commercial purpose. THE autorickshaw sold to the complainant was road-worthy and free from mechanical and manufacturing defects. THE vehicle was delivered only after proper testing. THE success of an autorickshaw depends upon various factors such as handling of the vehicles by the drivers, service by qualified person, usage etc. It is also submitted that all parts are of standard design and are fitted so as to synchronise with the Engine. THE opposite party has never been negligent and goods manufactured by the company are of high standard. THE opposite party being a commercial concern always tries to win the confidence of all its customers. THERE is no negligence on their part and the complainant should prove how and what injury he has suffered. And his claim is made without any basis and foundation. So all the claims made by complainant are to be rejected:-

The points for considerations are following:

(i) Whether the complainant is a consumer ? (ii) Whether the auto suffers from major defects pointed out by the complainant? (iii) If so, whether the opposite party is liable to pay compensation ? (iv) The order as to cost.

4. THE complaint was examined as PW1 and he produced documents which marked, as PWs 1 to PW 7. On the side of the opposite party, the Marketing Manager, Mr. K.G. Thomas was examined. Further the opposite party has taken an expert Commission. THE Executive Director, K.S.R.T.C. Chief Office, Thiruvananthapuram, Mr. C.K. Appukuttan Nair was the Commissioner appointed by this Commission on the request of the opposite party.

In our view the complainant is a consumer as defined by the Consumer Protection Act. He is an autorickshaw driver and he purchased the autorickshaw with the finance of Kerala State Financial Enterprises. He is running the autorickshaw as taxi for his livelihood and for self-employment. As per the explanation to Sec. 2(1)d(1) of the Consumer Protection Act he is a consumer.

The complainant purchased the autorickshaw from the opposite party for plying it as taxi for his livelihood. It is clear from the evidence of PW1 that after 2 months, the vehicle started trouble and a large amount was spent for purchasing spare parts and to get it repaired. But all efforts made by the complainant to make the vehicle in running condition proved futile and ultimately he had to keep the vehicle idle in his house. We do not find any reason to disbelieve the evidence of PW1 which show that the engine is defective and when the engine worked it generated over heat. The evidence of PW1 and the report submitted by the Expert clearly show that the engine had major defects and the autorickshaw developed trouble from its inception. On point No. 2 we hold that the engine had major defects. As the main controversy of the case was regarding the engine we appointed Sri. C.K. Appukuttan Nair, Executive Director, K.S.R.T.C. Chief, Thiruvananthapuram as an expert witness to inspect the vehicle at the instance of the opposite party. Accordingly he submitted a report. It is seen from his report that the existing engine is of slightly higher capacity (200CC) than the invoiced one (175CC), though he would opine that it appeared to have been synchronised suitably with gear box mounted on it. He also stated that the main defect noticed in the engine is excess wear on the cylinder liner at the gudgeon pin side which is indication of jamming piston mainly due to overheat. He also observed that since all other features in cooling fins casting etc. are good, the overheat symptoms shown are attributable to either any sort of manufacturing defect, dimensional or material quality or due to under utilisation of excess engine output. He stated that excess power output, if not converted into kinetic energy (load and speed) will be turned out as heat energy and in the absence of any cooling facility it will result in overheat of Engine. It is clear from his report that the Engine is defective and when the Engine worked, it generates over-heat. The evidence of PW1 and the report submitted by the expert clearly shows that the Engine had major defects and the autorickshaw developed trouble from its inception. Apart from this it is also clear that the Engine supplied was not the one invoiced. The complainant purchased this vehicle for Rs. 24359.48. An amount of Rs. 4293.70 was also given for obtaining gate pass. For purchase of spare parts he spent another Rs. 2000/-. The acts of opposite party have caused some financial loss. The complainant is bound to

pay the balance instalments with interest to the financial enterprises as per the hire-purchase agreement. The following are details of payment made by the complainant. Cost of autorickshaw-Rs. 24359.40 Amount collected from the complainant for gate pass-Rs. 4293.90 Cost of spare parts-Rs. 2000.00 We also find that the complainant had to pay interest on the loan amount raised. Accordingly, we order that the complainant is entitled to get refund of the above sum of Rs. 30653.30. The complainant also will be entitled to interest at the rate of 12% on these amounts from the date of payment by the complainant till the date of refund. He will be entitled to cost which we fix at Rs. 1000/-. Complaint allowed with costs.