

KESHAB RAM MAHATO Vs Hero Honda Motors Ltd.

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: March 27, 2002

Citation: 2003 1 CPJ 244

Hon'ble Judges: S.C.Datta , D.Karformas J.

Final Decision: Appeal dismissed

Judgement

1. THIS is petitioner's appeal against the order of the Forum dismissing the complaint petition.

2. THE petitioner approached the Forum praying inter-alia for refund of the price of the Motor Cycle or for replacement thereof together with

appropriate compensation. On 16.9.1998, he purchased a Hero Honda Motor Cycle for a sum of Rs. 39,670/- against a receipt duly granted by

OP-2, the local dealer of OP-1. He alleges that ever since the purchase the said Motor Cycle was giving trouble and it was emanating excessive

smoke because of certain manufacturing defects. THE said Motor Cycle was sent to the dealer for rectification, for the first time on 13.10.1998.

THE said Motor Cycle was covered under a warranty for a period of one year against any defect. THE dealer tried to rectify the problem but

failed. THEREafter, the Motor Cycle was sent to the dealer on several other occasions for rectification of the defects but the defects persisted. THE

dealer changed the Cyclinder, Piston Ring and Sealvalve Steam etc. But no improvement in the matter of emission of excessive smoke could be

noticed. THE petitioner approached the dealer for replacing the said Motor Cycle. But they declined to do so. Accordingly, the petitioner

approached the Forum. According to the petitioner the Motor Cycle is lying at the garage of the dealer on and from 6.7.2000.

The case was contested by the O.Ps. by filing a joint written statement wherein it has been denied that the Motor Cycle had any manufacturing

defect. According to the O.Ps. the petitioner allowed non-expert mechanics for rectification of the troubles which allegedly occurred and this

resulted in the present condition of the Motor Cycle. They claimed that in order to keep up the goodwill of the Company they have duly attended

to the complaints of the petitioner and set right the defects to the complete satisfaction of the petitioner and the petitioner obtained delivery of

possession of the Motor Cycle on each and every occasion after being satisfied with its performance. They state further that on the request of the

petitioner they replaced the Cyclinder, Piston Ring, Sealvalve Steam of the Motor Cycle on 17.5.1999 and after making the trial run the petitioner

took delivery of the Motor Cycle on being fully satisfied about its performance. According to them, the Motor Bike emitted smoke gas because of

use of adulterated fuel. The Motor Bike is lying at their workshop on the refusal of the petitioner to take it back.

On an analysis of the materials on record, the Forum noticed that there was no deficiency in service on the part of the O.P. and as such dismissed

the complaint petition. Hence, the petitioner has preferred this appeal.

3. HEARD learned Counsels for the parties. It is not disputed that the Motor Bike was purchased by the petitioner on 16.8.1998 with a warranty

period of one year. During the warranty period, it having emitted excessive smoke, it was sent to the workshop of O.P. 2 on a number of

occasions and it was repaired and then the Motor Bike was delivered to the petitioner. It may be mentioned that the petitioner wants replacement

of the Motor Bike because of alleged manufacturing defect. The learned Counsel for the respondents submits that no replacement is permissible

within the warranty period. The parties are bound by the terms and conditions of the contract. The O.Ps. are required to set right the defects only

in the event there occurs any defect in the Motor Bike. The O.P. claimed that every time the Bike was produced at their workshop, it was

attended to by their expert mechanics and on being satisfied about its performance on the road the petitioner had taken delivery of the Bike by

signing the job card. He submits that since there is no expert evidence to show that the Motor Bike suffers from manufacturing defect, they are not

bound to replace the Motor Bike. Learned Counsel for the appellant submits that since the Motor Bike had gone out of order off and on, it is to be

concluded that it has manufacturing defect. In our opinion, no such conclusion can be arrived at without any expert evidence. Learned Counsel for

the appellant has referred to a case reported in 1999 (1) CPR 152, to contend that when a vehicle which needs excessive repairs even during the

warranty period of its purchase, it cannot be said to be a new and functional vehicle. It may be observed that the vehicle was never idle. But it was

in road-worthy condition. It had run several thousand kilometres during the warranty period. The allegation of the petitioner was of course that it

emits excessive smoke even after some vital parts of the machine were replaced. In the decision cited by the learned Counsel for the appellant we

find that even the M.P. State Consumer Disputes Redressal Commission remanded the case back to the Forum with a direction to examine the

tractor by the Expert Engineer to ascertain whether any manufacturing defects existed. Here in this case there is no expert evidence who has

deposed that he had examined the Bike and noticed that it is beyond repair. In our view, in the absence of any expert evidence it is not possible to

conclude that the Bike had manufacturing defect.

Learned Counsel for the appellant has also referred to a decision of the Supreme Court reported in 1999 (5) Supreme Page 16, that since the

Motor Bike is in the custody of the O.P. the onus of proving that it had no manufacturing defect lies upon the O.Ps. It may be stated that the

Motor Bike was in the custody of the petitioner so long during the warranty period. At the present moment it is lying in the workshop of the O.Ps.

The definite case of the O.Ps. is that the petitioner did not take back the Motor Bike despite repeated requests. In view of the assertion made and

in view of the fact that there is no denial to it we may safely conclude that the petitioner is in no mood to take back the Bike. The only grievance of

the petitioner is that it was emitting excessive smoke and for this reason alone it is not possible to conclude that it had manufacturing defects. In our

view, none of the judgments cited by the learned Counsel for the appellant exactly supports the case of the appellant. Therefore, having considered

the facts and circumstances we are in agreement with the views of the Forum and hold that the judgment calls for no interference. The appeal fails

and it is dismissed on contest. Appeal dismissed.