

(2004) 04 NCDRC CK 0084

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

GULZAR ABDUL
RAHIM MULLA

APPELLANT

Vs

MANAGER, AUTO
INDUSTRIES GOA PVT.
LTD.

RESPONDENT

Date of Decision: April 8, 2004

Citation: 2004 3 CPR 564 : 2004 4 CPJ 226

Hon'ble Judges: J.N.Prabhudessai , Sandra Vaz E.Correia J.

Advocate: A.Naik , M.G.S.Khandeparkar

Judgement

1. THE complainant is a businessman residing at Vasco da Gama. THE opposite party No. 1 is the dealer of the opposite party No. 3. THE opposite party Nos. 2 and 3 are manufacturers of "Tata Indica" vehicles.

2. IN a nutshell, it is the case of the complainant that he purchased a Tata INDICA vehicle model January, 2000 for a sum of Rs. 3,13,178/- on 24.4.2000. Right from the day he purchased the suit car registered under GA-06/A-6786, he could not use the same for his daily work as it was not functioning smoothly and had many major manufacturing/production defects as well as minor problems. The suit vehicle was referred to the opposite party No. 1 and other service points of the opposite party Nos. 2 and 3 for a total of nineteen times between 6.6.2000 and 23.3.2001. Due to the alleged defects, the vehicle was kept for a period of 70 days at the various service outlets of the opposite parties.

It was alleged that the five tyres of the suit vehicle wore out when the mileage was 14,349 kms. on account of which the complainant had to replace the said five tyres and also pay a sum of Rs. 4,000/- towards other charges. Again, at 28,334 kms. the tyres of the suit vehicle wore out and had to be replaced.

Due the above defects and the opposite parties failure to rectify the same in time, the complainant suffered heavy financial losses towards inability to use the vehicle. Consequent loss of business and mental torture and agony.

3. THE complainant addressed a letter dated 10.4.2001 to the opposite party No. 1 and surrendered the suit vehicle to the opposite party No. 1 on the same day. THE suit vehicle is lying at the service station of the opposite party No. 1 since 10.4.2001. THE opposite party No. 1 replied to the said letter and informed that the opposite party No. 2 would look into the matter, however no response was forthcoming. THEREafter the complainant issued a legal notice dated 7.6.2001 to the opposite parties calling upon them to replace the said vehicle by allotting a new vehicle or alternatively to refund the sum of Rs. 3,13,178/- and a sum of Rs. 8,00,000/- towards mental tension and loss of business. However the opposite parties did not comply with the said notice. THEREafter, the complainant issued another legal notice dated 12.7.2001. However, no action was taken by the opposite parties other than replying to the said notice.

The complainant has prayed for a direction to the opposite parties to replace the suit vehicle or alternatively to refund the cost of the vehicle amounting to Rs. 3,13,178/-. The complainant also prayed for a direction to the opposite parties to pay a sum of Rs. 8,00,000/- towards damages and further loss at the rate of Rs. 500/- per day.

4. UPON being noticed, the opposite parties filed their written version. It was denied that the complainant resided at the address mentioned in the complaint. The complainant got the vehicle registered in Goa in violation of the law and with the intention to evade higher taxes in the State of Karnataka. The complainant misrepresented that he was a resident of Vasco at the time of purchase, when actually he is a resident of Belgaum. It was denied that the vehicle could not be used by the complainant for his daily work or that the same was not functioning smoothly

from the day of purchase. It was denied that the vehicle had any major manufacturing or production defects or that it had any minor defects. It was submitted that the suit vehicle had covered 1,500 kms. at the time of first servicing on 6.6.2000 when the vehicle reported at Manickbag Automobiles, at Hubli on 15.7.2000 it had covered an additional mileage of 6000 kms. at that time it was noticed that the vehicle had missed the mandatory servicing to be done after covering 5,000 kms which was a condition precedent for the warranty of the vehicle. At the said workshop, it was observed that the vehicle had been used in a rough manner and that it had met with an accident. It was submitted that the defects mentioned by the complainant were not manufacturing/production defects, but were defects that had arisen out of the impact in an accident and some of them were coupled with non-carrying out of service upon completion of 5,000/- kms. of run. It was further submitted that the vehicle had travelled outside the State and had travelled a distance of 28,334 kms. within a year of its purchase thus contradicting the complainants claim that he could not use the vehicle as the same had been kept for repairs during major period of time. It was alleged that the vehicle had been left at the workshop of the opposite party No. 1 without any valid reason and in spite of several oral and written requests. Parties filed their affidavit-in-evidence along with annexures and reiterated the stand taken by them in their pleadings.

Counsels for the parties filed written submissions.

5. WE have perused the pleadings and evidence on record in minute detail and considered the written submission filed by the parties.

6. IT is evident from the record that this is a case of an unsatisfied customer who repeatedly faced mechanical and other problems with his vehicle, ultimately compelling him to surrender the vehicle at the workshop of the dealer.

The complainant has produced voluminous documentary evidence in the form of job cards and invoices to show that the vehicle consistently developed mechanical problems and had to be taken to the authorised service centres of the opposite parties for repairs. It is seen from the job card of Manickbag Automobiles, Hubli

dated 15.7.2000 that the complainant reported several mechanical and other defects in the vehicle. Again, five days later the vehicle was brought to the workshop of the opposite party No. 1 and some parts were replaced. On this occasion, the complainant also reported "Bell Joint problem and Disc bend". Again about a fortnight later the vehicle was taken to Shriya Motors, Belgaum with some more complaints. Thereafter the vehicle was taken to the said service centre seven times within the period of three months with various complaints of mechanical problems and abnormal wear and tear of the vehicle. During this period, M/s. Shriya Motors, by their letter dated 25.10.2000, informed the complainant that the problem with the gear box, rear suspension and tyre wear problem had been referred to the authorised dealer M/s. Manickbag automobiles, Hubli. It is evident from this letter that the said mechanical problems were major in nature and could not be handled by an "Authorised Service Point" and had to be referred to a larger service establishment of the Company. In this letter, the said Shriya Motors has also admitted that the said parts could not be replaced on account of non-availability of spares. The vehicle appears to have been with M/s. Manickbag Automobiles, Hubli till on or about 4.11.2000. It is seen from the invoice of M/s. Manickbag automobiles dated 4.11.2000 that the gear box had been overhauled and transaxel 5 speed new" part had been replaced. However, the vehicle was again taken to M/s. Shriya Motors, Belgaum, about 10 days later with complaint of "4 wheel wear tear". Again on 18.1.2001, the vehicle was taken to M/s. Shriya Motors with several complaints of mechanical and operational problems. Less than a month later the vehicle was once again taken to the said service point with several complaints.

7. ON 2.3.2001 the complainant received a letter from M/s. Shriya Motors informing him that they were unable to replace the "defective steering gear box" (emphasis supplied). The complainant was asked to refer the matter of M/s. Manickbag Automobiles, Hubli for further repairs. It appears from the record that the complainant surrendered the vehicle at the workshop of the opposite party No. 1 about a month later i.e., on 10.4.2001.

The main thrust of the opposite parties' defence is that the complainant did not avail of the second free service; the vehicle had met with an accident prior to 15.7.2000, the vehicle had been subjected to rough use and hence the abnormal wear and tear. We are not convinced with the explanation given by the opposite parties. Insofar as the second free servicing is concerned, it is apparent from the job card of the opposite party No. 1 dated 20.7.2000 that the second free servicing was carried out by the said opposite party. Even assuming that the complainant had

delayed in carrying out the said free servicing at 5000 kms. run, the opposite parties had been unable to show as to how the enumerated major defects have occurred as a consequence more so in view of the fact that the second servicing was carried out at 7279 kms. run.

8. THE opposite parties have also alleged that the suit vehicle met with an accident prior to 15.7.2000 and that this was observed by M/s. Manickbag Automobiles. However, there is no evidence of any such accident having occurred. It is true that M/s. Manickbag Automobiles has observed some "body scratches" as noted in the job card, however, by no stretch of imagination can this fact point out to the occurrence of any major accident.

The opposite parties have also alleged that the suit vehicle was used in a rough manner and hence the abnormal wear and tear of tyres, etc. In our opinion, mere attribution of these defects to rough use and bad road conditions is no consolation. The opposite parties have even taken refuge on the pretext that the vehicle was used to commute between Belgaum and Goa several times during the period in question and that the road in the Anmod sector was in a very bad condition. Passing on the blame for abnormal wear and tear on poor road conditions particularly in this country is unacceptable.

The opposite parties have repeatedly harped on their allegation that though the complainant was a resident of Belgaum, he had got the vehicle registered in Goa in order to evade higher taxes in Karnataka State. It is seen from the records that the vehicle was duly registered by the Transport Authorities in Goa who have done so after verification of the complainant's residential status. In any case, this issue has no relevance at all to the dispute before us.

9. IT is apparent from the records that the opposite parties who are large corporate houses, have failed and neglected to look into the genuine grievances of a helpless consumer. IT was also the case of the opposite parties that the complainant ought to have examined an expert to prove the existence of manufacturing defects. However, we are convinced that the consumer-complainant has shown clear preponderance of probability of the existence of major defects by producing exhaustive documentary evidence in the form of job cards, letters from

dealers/authorised service points of the opposite parties themselves.

10. IN Scooters INDia Ltd. v. M. Mohanty, R.P. No. 240/2000, the Hon"ble National Commission in its order dated 29.6.2001 observed that a new vehicle has to be mechanically perfect and defect free. It could be that some errors are insignificant but there may be many others which substantially impair use of the vehicle. If the vehicle is defective a consumer has a right to seek its replacement or refund of the price. Though the burden to prove the defect would be on the consumer it must be understood that the consumer is not bound to pin-point the precise nature of defects or its cause of source. It is not always necessary for the consumer to give expert testimony though if he does so it will add to the weight of the evidence. However, it must be shown that the use of the vehicle has been substantially impaired on account of the defects. If the defects are insignificant that could not be a case for replacement or refund. A Consumer Forum has however, to take into consideration the consumers state of mind as well. After all he had invested in a new vehicle to but peace of mind hoping that the vehicle is dependable and trouble-free. The opposite parties have brought to our notice Mahindra and Mahindra v. Takkur Dessai, II (1993) CPJ 225 (NC), and Kinetic Engineering v. Chaurasia, II (1995) CPJ 4 (NC). The facts of the above cases are distinguishable from the facts of the present case at hand.

It is admitted fact that the complainant surrendered the suit vehicle to the opposite party No. 1 on 10.4.2001 on account of the serious defects. In our opinion the complainant is entitled for compensation in the form of loss of interest on the cost of the vehicle since that date.

11. THE complainant has prayed for damages to the extent of Rs. 8,00,000/- and for further compensation of Rs. 500/- per day. THERE is no evidence on record to even remotely substantiate the claim.

In view of what is discussed above, we pass the following order:

(i) The opposite parties jointly and severally are directed to replace the suit vehicle with a new vehicle which is free from defects within 30 days from the receipt of this order. (ii) The opposite parties, jointly and severally are directed to pay to the

complainant interest @ 12% on the amount of Rs. 3,13,178/- from 10.4.2001 till replacement of the vehicle within 30 days. (iii) The opposite parties jointly and severally are directed to pay to the complainant an amount of Rs. 5,000/- as costs of this litigation. Order accordingly.

Complaint disposed of.