
Escorts Ltd Vs Naryan Prasad

None

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Dec. 2, 2011

Citation: 2012 1 CPJ 213

Hon'ble Judges: V.B.Gupta , Suresh Chandra J.

Final Decision: Revision Petitions dismissed.

Judgement

1. BEING aggrieved by order dated 15.12.2009, passed by State Consumer Disputes Redressal Commission, Bhopal (for short as "State

Commission)" petitioner has filed these revisions.

2. NOTICE of these revisions was issued to both the respondents but respondent No. 2 did not appear in spite of service and as such was

proceeded ex parte.

3. BRIEF facts of this case are that respondent No. 1/complainant filed a complaint before District Consumer Disputes Redressal Forum, Vidhisha,

M.P. (for short as "District Forum") on the ground that he had purchased a tractor manufactured by petitioner from respondent No. 2 (OP-1 in

the District Forum) under the exchange scheme launched by the petitioner. Accordingly, respondent No. 1 gave his old tractor for Rs. 60,000 and

paid Rs. 40,000 towards margin money. It is alleged that the tractor did not start the very next day of delivery and on complaint to respondent No.

2, new battery was alleged to be replaced by the old battery on which the year of manufacturer was not mentioned. It is further alleged that the

tractor was emitting lot of fume and was not taking load and consuming lot of diesel. Despite first service, the tractor was consuming lot of diesel.

Respondent No. 1 made a complaint and respondent No. 2 replaced the diesel pump, after which the consumption of diesel was reduced. On

further complaint, respondent No. 2 replaced the ring piston of the tractor. Further, it is alleged that the tractor was having old tyres in it and the

tractor was also repainted in patches from where the original colour of the tractor was coming out. Accordingly, respondent No. 1 filed a

complaint against the respondents' deficiency, praying that new tractor be given in place of old tractor and further he be awarded compensation on

account of mental harassment suffered by him.

4. PETITIONER in its written statement has stated that it has never received any complaint from respondent No. 1 that the tractor was not starting

from very next day of delivery. With regard to the complaint of consumption of high diesel, it was found that respondent No. 1 was using diesel

mixed with kerosene because of which the diesel pump and ring piston of the tractor was replaced without any charges. Moreover, petitioner

never received any complaint from respondent No. 1 that the tractor was old. It is further stated that there was no manufacturing defect in the

tractor sold and delivered to respondent No. 1. It is further stated that any defect alleged to be there in the tractor, petitioner removed to the

satisfaction of respondent No. 1, as per the job cards signed by him. It is also alleged that there is no privity of contract between the petitioner and

respondent No. 1. Further, petitioner has also filed reply for setting aside the report of the local mechanic as the same was not maintainable under

Section 13(1)(c) of the Consumer Protection Act, 1986 (for short as "Act").

5. RESPONDENT No. 2 in its written statement filed before District Forum, has stated that it has never received any complaint from respondent

No. 1 that the tractor was not starting the very next day and it did not even replace any battery. On the complaint with regard to the consumption

of diesel, it was found that respondent No. 1 was using diesel mixed with kerosene because of which the diesel pump and ring piston of the tractor

was replaced without any charge. Further, answering respondent never received any complaint from respondent No. 1 that the tractor was old.

6. ARGUMENTS advanced by learned Counsel for the petitioner as well learned Counsel for respondent No. 1 have been heard.

7. IT is contended by learned Counsel for the petitioner that impugned order as well the order passed by the District Forum, suffers from material

irregularity as there is no finding of any inherent manufacturing defect and the Foras below failed to call for any independent expert opinion. In the

absence of which it cannot be asserted that there was any inherent manufacturing defect. The Foras below ignored the report of Government

approved lab in preference to the local mechanic. There is no material on record to show of any alleged defect or high consumption of diesel in the

tractor.

8. ANOTHER contention is that there is no privity of contract between petitioner and respondent No. 2. In terms of dealer sales agreement,

relationship between the two is on principal to principal basis and as such petitioner cannot be held liable for the acts and omissions on the part of

respondent No. 2. During the warranty period, respondent No. 2 had serviced the tractor to the full satisfaction of respondent No. 1 free of costs

and respondent No. 1 has signed the satisfactory job cards, in such circumstances there was no occasion to hold that petitioner is collectively liable

for any deficiency in service on the part of respondent No. 2. Hence, the impugned order is liable to be set aside.

9. ON the other hand, it is argued by learned Counsel for respondent No. 1 that there are findings of fact by the Foras below that there was defect

in the tractor and that is why certain parts were changed. In spite thereof, the tractor was not functioning properly and as such there is no ambiguity

or infirmity in the orders passed-by Foras below.

10. DISTRICT Forum, vide order dated 22.11.2006, partly allowed the complaint of respondent No. 1, against petitioner and respondent No. 2.

The operative part of its order read as under:

25. On the basis of above analysis in the present case, no deficiency in service on the part of the respondent No. 3 is found proved, therefore, this

complaint filed by the applicant against the respondent No. 3 is dismissed and is allowed partly against respondent Nos. 1 and 2 with the following

directions. 1. Respondent Nos. 1 and 2, jointly or severally, are directed to receive back above said tractor No. M.P. 40 M-7336 purchased by

the applicant on producing the same and to give a new tractor of the same Model in place of the abovesaid tractor or to give the cost of the tractor

Rs. 3,39,440 (Rupees three lakh thirty nine thousand four hundred forty only) to the applicant with interest at the rate of 6% per annum from

12.7.2003 upto the date of actual payment. 2. Respondent Nos. 1 and 2 are also directed to pay the costs of the complaint Rs. 500 (Rupees five

hundred only) to the applicant. Respondent No. 3 will bear his own costs of the complaint. Respondent Nos. 1 and 2 are directed to comply with

the abovesaid order within the period of one month.

11. AGGRIEVED by the order of District Forum, petitioner as well as respondent No. 2 filed appeals before the State Commission. Both these

appeals were disposed of by the impugned order and operative part of it read as under:

6. It appears that despite replacing the injector and nozzles and overhauling of engine, the tractor was not generating torque necessary for

operation. It is, therefore, clear that this tractor cannot be used by the complainant without causing loss to him, on account of high diesel

consumption of the tractor and low torque generated by it. Under these circumstances, we are of the view that the opposite party Nos. 1 and 2

should give a new tractor in place of old tractor or its price as directed by the Forum. If the above mentioned opposite parties deem it proper to

pay the amount rather than exchange the tractor they shall pay 6% interest on the amount as directed by the Forum. This appeal is accordingly,

disposed of.

12. ON the one hand petitioner in its written statement has taken the plea that there is no privity of contract between it and respondent No. 1, as

petitioner does not sell its tractor to its any individual customer and the tractors are sold by petitioner through its authorized dealers only.

Moreover, the relationship of petitioner with its authorized dealers is governed by its dealer sales agreement and that agreement stipulates the

relationship between the two to be on principal to principal basis only. In other words, petitioner cannot be held liable for the acts or omissions, if

any, on the part of respondent No. 2.

13. WHILE on the other hand, petitioner in its written statement states that it is pertinent to mention here as is evident from the service record of

the said vehicle that replacements have been made in the said tractor on free of cost basis, due to company"s policy of customer care and

satisfaction. Moreover, the customer has signed satisfaction notes on the various job cards which shows that he was satisfied by the condition of

the tractor and services provided.

14. THUS, petitioner has taken contradictory defence in the case, as on the one hand it states that there is no privity of contract between the

petitioner and respondent No. 1 (complainant) and on the other hand, it states that replacements have been made in the said tractor on free of

cost basis, as per company"s policy of customer care and satisfaction.

15. SO this plea of the petitioner that there is no privity of contract between the petitioner and respondent No. 1, thus, falls to the ground.

16. DURING the course of arguments, learned Counsel for the petitioner has laid much stress on the job cards (copies of which have been filed)

contending that as per job cards, the work was done to the satisfaction of the respondent No. 1 and as such the present revision petition is not

maintainable.

17. AS far as the job cards regarding satisfaction record by the respondent No. 1 are concerned, the tractor in question was sold on 15.7.2003 to

respondent No. 1, whereas the so called job cards placed on record by the petitioner pertains to the period between 29.3.2003 and 21.4.1004.

These job cards which are of prior to sale of the tractor in question, are of no help to the petitioner in this case.

18. AS far as Section 13 of the Act is concerned, since there is an admission on behalf of petitioner as well as respondent No. 2 that defects in the

tractor were removed, it goes on to show that there were defects in the tractor and as such provision of Section 13 of the Act, are not applicable

to the facts of the present case.

19. IN the present case, there are concurrent findings of facts given by two Foras below that there were defects in the tractor and that is why

certain parts of it were changed. Thus, petitioner cannot escape from its liability because petitioner is the manufacturer of the tractor in question

which is found to be defective. Further, respondent No. 2 being dealer of the petitioner, has sold the defective tractor to respondent No. 1, and as

such he is also liable for selling defective tractor to respondent No. 1. Since, there are defects in the tractor, it is the joint responsibility of both the

manufacturer as well as dealer, to rectify these defects. Under these circumstances, in view of the concurrent findings of facts given by two Fora

below, we find no ground to disagree with their reasonings.

20. RECENTLY, Hon"ble Supreme Court in Mrs. Rubi (Chandra) Dutta v. M/s. United India Insurance Co. Ltd., II (2011) CPJ 19 (SC)=IV

(2011) SLT 303=2011 (3) Scale 654, has observed:

Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said

power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set

aside. In our considered opinion, there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission

to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some

legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts.

This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the

jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view

could have been taken by setting aside the concurrent findings of two Fora.

21. HENCE, in these petitions, no jurisdiction or legal error has been shown to call for interference in the exercise of power under Section 21(b)

of the Act, since two Fora below have given cogent reasons in their order which does not call for any interference nor they suffer from any infirmity

or revisional exercise of jurisdiction.

22. IT is not that every order passed by Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

23. ACCORDINGLY, present revision petitions are not maintainable being devoid of any merits. The same has been filed just to waste the time of

this Commission. Accordingly, both these petitions stand dismissed with costs of Rs. 10,000 (Rupees ten thousand only).

24. PETITIONER is accordingly directed to deposit the costs by way of cross cheque for the sum of Rs. 10,000 (Rupees ten thousand only) in

the name of ""Consumer Legal Aid Account"" within four weeks from today.

25. IN case, costs are not deposited within the prescribed period, petitioner shall be liable to pay interest @ 9% p.a., till realization.

26. LIST on 13.1.2012 for compliance. Revision Petitions dismissed.