(2012) 05 NCDRC CK 0082

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Gulab S/o Mohd. Shoib — APPELLANT

Vs

Force Motors Ltd — RESPONDENT

Date of Decision: May 22, 2012

Citation: 2012 0 NCDRC 176 : 2012 3 CPJ 149 : 2012 3 CPR 8

Hon'ble Judges: J.M.Malik , Suresh Chandra J.

Advocate: Rajesh Kumar , Syed Hasan Isfahani

Judgement

1. BOTH the parties are up in arms over the purchase of a vehicle. The facts giving rise to present litigation are these. Gulab, the petitioner/complainant in this case purchased a closed body Bajaj Mini Door CNG Three-Wheeler from M/s Temp Automobiles Ltd. Jhandewalan Street, New Delhi. The vehicle was not as per the specifications described in the brochure. The delivery van was with covered body, which was not registrable in New Delhi. Secondly, it has reduced weight carrying capacity . The complainant thought that he was led up the green path due to the deficiency in service on the part of respondents. He, therefore, prayed for refund of the cost of the vehicle with compensation and cost of litigation.

2. THE learned District Forum allowed the complaint holding that the Force Motors Ltd. (Respondent 1) M/s Tempo Automobiles Ltd., Jhandewalan Street, New Delhi were jointly and severally liable to refund a sum of Rs. 2,13,500/- (Rs. 2,05,00/- being cost of vehicle and Rs. 8,500/- being expenses on insurance and registration charges) with interest @ 20.42 per annum from 04..11.2006 till realization, on return the vehicle by the petitioner with NOC from financer (ICICI Bank Ltd.). A

compensation in the sum of Rs. 5,000/- and Rs. 3,000/- towards cost of litigation were also awarded in favour of the complainant.

Aggrieved by that order , Force Motors Ltd. and Tempo Automobiles Ltd. preferred an appeal before the State Commission. The State Commission held:-

The vehicle was sold on 9.10.2006 and delivery according to Respondent/complainant was taken on 04.11.2006. Depreciated value if we calculate @ 10% per annum for 3 years, it will come to Rs. 1,55,682/- rounded to Rs. 1,56,000/-. The impugned order is thus modified as follows:- The OP 1 & 2 jointly and severely shall refund a sum of Rs. 1,56,000/- with interest @ 18% per annum subject to the Respondent/complainant returning the vehicle without any damage excepting normal wear and tear alongwith NOC from the Financer. Compensation and cost of litigation as ordered by the Ld. District Forum, shall remain un-altered.

We have heard the learned counsel for the parties. Learned counsel for the petitioner laid emphasis on the plea that the order passed by the District Forum is correct and the order passed by the State Commission suffers from various illegalities and infirmities. The State Commission has wrongly decided that depreciation for 3 years was to be deducted. There is no evidence that the vehicle in question was used for 3 years. It was pointed out that, although, the respondents in their appeal before the State Commission stated as under, In the present case also the complainant had made extensive use of the said vehicle, purely for commercial purpose, over a period of almost two years. As it is evident from inspection report dated 11.12.2006 filed by the complainant that just after one month of purchase of the vehicle in question it had run 3782 Kms. In view of the extensive use of the vehicle in question for such a period of time, the complainant is neither entitled to replacement nor the refund of the price of the vehicle in question. yet, the respondents did not pray for any deduction in depreciation anywhere in memo of appeal.

3. IT was next argued that the petitioner is a poor man and the respondent should be fined for indulging in such illegal activities and unfair practices. However, on the contrary, deduction for 3 years for depreciated value of the vehicle was given in their favour. IT was argued that the appeal should be accepted because the order was passed not on the pleadings of the parties that the vehicle was defective. The petitioner has produced on the record Registration Certificate and RTI Information, which is produced as follows:

Sr. No. Question Answer 1 What is the reason for declaring the type of Body of the said vehicle as Delivery Van instead of Container The Minidor Three Wheeler CNG of M/s Force Motors Ltd., Pune has been approved by Transport Deptt. Vide letter No. F.20 (57)/TPT/AD(OPS)/2005/5840-55 11 dated 05.07.06 (copy enclosed at Annexure-A) for fitness / registration only with open body (dalla type) goods carrier. 2 What is the reason for declaring the unladen the weight of the vehicle as 700 kg. Instead of approx. 900 kg. The owner has modified the body from open body (dalla type) to covered body without prior permission of Competent Authority therefore the weight has been increased from 700 kg to 900 kg. The actual unladen weight is 700 kg as per sale certificate Form No. 21 of M/s Tempo Automobile Pvt. Ltd. (copy enclosed at Annexure B) 3. What should I do to get these discrepancies moved from the RC of my vehicle There is no discrepancy in the details mentioned as per RC 4. Why the vehicle has been passed without the provision of a seat belt As per CMVR Rule 125 (1) the manufacturer of every motor vehicle other than motor cycles and three-wheelers of engine capacity no exceeding 500 c.c. shall equip every such vehicle with a seat belt for the driver and for the persons occupying the front seat (copy enclosed at Annexure-C). Therefore, the seat belt is not desired.

All these arguments lack conviction. This was not denied by the counsel for the petitioner that the petitioner had run the vehicle for 3782 Kms. This is also admitted that the vehicle remained in the possession of the petitioner from June 2007 to June 2010. The vehicle was driven for some time approximately for one year. In an authority Jay Malhotra V. M/s Maruti Udyog Ltd. & Anr. Consumer Protection Judgement [III (2002) CPJ 95 (NC)] , it was held that the car purchased by the buyer was defective. The complainant/buyer moved an application for replacement or in the alternative refund of the price of the car. It also transpired that the vehicle was extensively used for 7 months. It was held that M/s Maruti Udyog Ltd. & Anr. the seller of the car was not liable to replace or refund the money.

4. THE plea taken by the respondents was that the petitioner is neither entitled to replace the vehicle nor for the refund of price of vehicle in question. However, the State Commission did not accept these pleas but calculated depreciated value @ 10% per annum for 3 years. This cannot be said that there was no pleading in this respect. THE petitioner was claiming the refund of money. It is for the Court to find out for how much amount he is entitled. THE view taken by the State Commission, under the circumstances is correct. THE important facts and circumstances which go to the route of the dispute cannot be grossed over.

As a matter of fact, the petitioner wants to take the benefit of both the worlds. He has driven the vehicle for about 1 year or more. If the vehicle was defective, he should not have used the vehicle at all. On the contrary, it appears that the Fora below have taken a sympathetic view towards the petitioner.

Consequently, we find that the petitioner does not have a bone to pluck with the respondents. Revision Petition is, therefore, dismissed. No costs.