
(1995) 1 SCC 759

Supreme Court of India

Case No: SLP (C) No.14011 Of 1993

Mohinder Pratap Dass

APPELLANT

Vs

Modern Automobiles
and Another

RESPONDENT

Date of Decision: Sept. 16, 1994

Citation: (1995) 1 SCC 759

Hon'ble Judges: Kuldip Singh, J; B. L. Hansaria, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The appellant filed a complaint before the District Consumer Disputes Redressal Forum (District Forum). It was alleged in the complaint that

despite the deposits of the full price of the car, the respondents intentionally did not deliver the vehicle within one month's time. According to the

complainant having not been assured by the respondents about the release of the car within the period of one month, he would not have deposited

the balance price of the car. Aggrieved by the non-delivery he served a notice on the respondents and it was only thereafter that the car was

released on 26/12/1990. He was, however, compelled to pay the extra amount of Rs 5858 on account of price hike in December 1990.

Consequently, he claimed the relief of Rs. 5,858.00 and also interest on the deposited amount as the price of the car. The District Forum on

appreciation of evidence and taking into consideration other relevant material before it came to the conclusion that delivery of the vehicle was

withheld intentionally to take advantage of the impending price hike. The respondents challenged the order of the District Forum by way of appeal

before the Consumer Disputes Redressal Commission, Haryana, Chandigarh (State Commission) which upheld the findings of the District Forum in

the following words:

ONCE it is found as above, it would be somewhat clear that there was a patent delay of nearly two months in the delivery of the car even after

the receipt of the full payment for which no adequate explanation appears on the record. In the absence of any agreement to the contrary the rule in

Section 32 of the Sale of Goods Act, has to be complied with. The District Forum's finding that the delay in delivery had been probably done

intentionally to extract an enhanced price from the complainant is, therefore, not devoid of plausibility. Consequently, there is patent deficiency in

the service the appellants had undertaken to render and the District Forum in the consumer jurisdiction rightly awarded the relief and compensation

therefor.

2. The respondents, thereafter, invoked the revisional jurisdiction of the National Consumer Disputes Redressal Commission, New Delhi (National

Commission) which reversed the judgments of the two courts below. The National Commission held that the transaction in question was purely

one of sale of goods under a contract for sale of a motor vehicle and there it was not alleged that there was any "defect" whatsoever in the vehicle

that was supplied. The National Commission further held that there was no arrangement for performance of any service for consideration and

hence the question of "deficiency in service" did not arise. We do not agree with the reasoning and the conclusions reached by the National

Commission. The delivery of the car within the specified period is a part of the service to be performed by the respondent. There was patent

deficiency in service"" when the respondents withheld the delivery intentionally to take advantage of the impending price hike. The National

Commission relied on its earlier order in First Appeal No. 5 of 1992 decided on 7/12/1992. The facts of that case are entirely different. The

National Commission in that case had come to the conclusion that there was no substance or evidence to show that the dealer was in any manner

guilty of any unfair trade practice. In the present case the District Forum and the State Commission concurrently came to the conclusion that the

respondents intentionally delayed the delivery of the car so that enhanced price could be charged from the appellant. The view we have taken is

fully covered by the judgment of this court in Om Prakash v. Assistant Engineer, Haryana Agro Industries Corpn. Ltd.

3. We allow the appeal, set aside the order of the National Commission and restore that of the District Forum as upheld by the State Commission.