

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
WEST BENGAL
11A, Mirza Ghalib Street, Kolkata - 700087**

**First Appeal No. A/285/2019
(Date of Filing : 20 Mar 2019)**

**(Arisen out of Order Dated 20/02/2019 in Case No. Complaint Case No. CC/96/2018 of District
Kolkata-II(Central))**

1. Santanu Roy Chowdhury

S/o Lt. N.Roy Chowdhury, Swati Aprt., Flat no. 502, T.N. Boral
Lane, P.O. Rajarhat Gopalpur, opp. Tax office, Bablatala,
Kolkata -700 136.

.....Appellant(s)

Versus

1. M/s. Canon India Pvt. Ltd.

PS Arcadia Central, 4th & 6th F1, 4A, Abanindra Nath
Thakur(Camac street), Kolkata -700 017, P.S. Shakespeare
Sarani.

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHRA SANKAR BHATTA PRESIDING MEMBER
HON'BLE MR. NITYASUNDAR TRIVEDI MEMBER**

PRESENT:In-person, Advocate for the Appellant 1

Mr. Abu Sakar.Nasrin Sultana., Advocate for the Respondent 1

Dated : 07 Jun 2024

**Final Order / Judgement
Sri Nityasundar Trivedi, Member**

This Appeal arises out of the grievance against the Order of the Hon'ble DCDRF, Kolkata, Unit-II dated 20.02.2019 in CC case No.96/2018 filed on 26.2.2018, in which the Complainant of that case (Appellant of this case) sought interference of the aforesaid Ld. DCDRF for not getting the DSLR Camera (EOS 80D)purchased on 23.01.2017 from Capital Photo Services (P) Ltd., on 23.01.2017 at a price of Rs.69500/-, which allegedly started malfunctioning within 4 months 3 days of purchase. The warranty period of the said Camera was 2 years from the date of its purchase. It was once got repaired within the warranty period and handed over to the Appellant (Complainant at the District Level) on 14.06.2017. The said Camera was found again in malfunctioning condition on 10.10.2017 and on 23.10.2017 the Complainant lodged the service request at Capital Photo Service (P) Ltd., the showroom wherefrom it was purchased.

The Complainant's version is that service engineer working at the Service Centre (Master Service Centre, Kolkata) noticed "no water logging or rust or fungus within it when the Camera was handed over on 23.10.2017" as manifested from the entries made in the requisite form. But on the very next day he got a message from CMSC to the effect that the said Camera malfunctioned being water logged and it needed repair at a cost of Rs.51,000/-, to which he vehemently opposed as it was within warranty period.

The Complainant also alleged, subsequently, the same Service Centre sent a revised estimate of Rs.27227/- for repair of the said Camera.

That followed a series of exchange of letters and telephonic conversations and ultimately on 30.11.2017, the Service Centre informed the Complainant that they are unable to provide any repairing service free of cost, even though it was within the time period of 2 years warranty.

The Appellant (Complainant at District Level) demanded replacement of the malfunctioning Camera and claimed a new one of same brand. The O.P Canon Company turned down this demand of the Complainant. Branding such acts on the part of the O.P (Respondent of this Appeal Case), “unfair trade practice, negligence and deficiency in service”, the Appellant (Complainant at District Level) preferred this Appeal before this Hon’ble State Commission for relief.

This case was contested at the District Level. The O.P contested this case by filing W/V admitting the fact of purchase of the Camera on 23.01.2017 and subsequent repairing of the said Camera for its first time malfunctioning on 14.06.2017. As to the refusal for second timed malfunctioning, the version of the O.P was that the Camera malfunctioned for rust due to exposure to water, for which the purchaser was not entitled to have benefit of warranty. The O.P’s stand was the Camera was damaged due to Complainant’s negligence and mishandling. Accordingly, the O.P refused free repairing service though within warranty period.

Thus, the epicenter of dispute is regarding the controversy whether the said Camera malfunctioned due to rust caused for water exposure following negligence and mishandling or not.

So the main task before this Hon’ble State Commission is to judge whether the Camera which was handed over to repairing Centre of Canon Company on 23.10.2017 malfunctioned due to rust origination out of water influx or not. Both sides claimed just the Opposite and surely there were no video recordings of each second of the 4 months nine days, after first time repair of the malfunctioning Camera and its handing over to the purchaser on 14.06.2017 to handing over for repair on 23.10.2017, when prima facie defects of the camera was noted in the repairing form, before the Service Centre’s technician.

In this backdrop we are to decide whether the Ld. DCDRF rightly judged that water entered inside the Camera due to negligence and mishandling of the purchaser, or not.

On perusal of the 3(three) paged impugned Judgment, it appears that the Ld. Commission jumped to the conclusion that the Camera malfunctioned for being exposed to water for non-adopting of proper care by the purchaser (Penultimate Paragraph of the third page of the three paged Judgment).

Here it will not be irrelevant to mention that the Complainant produced Xerox copies of forms filled in before the technician of the service Centre, which shows there was no tick mark () beside the box provided adjacent to the space to mention probable defects, so far as it relates to exposure to water (Page 89 – Exhibit O.P/3), in the 10th Page of the Evidence on behalf of the O.P.

Exhibit-O.P/3 (Page - 89) was submitted from the end of the O.P wherefrom it is crystal clear that on 23-10-2017, when the malfunctioning Canon Camera was handed over to Master Service Centre, Kolkata (O.P’s Service Centre), the form in which observation of defects were recorded, no water exposure was shown by the service engineer, deployed by the O.P.

Since this piece of paper is produced as an evidence submitted by the O.P Canon India Pvt. Ltd., it tantamounts to the admission that the malfunctioning did not occur due to water exposure. Further elaboration is unnecessary.

The observation of the Ld. District Forum contained in the 3 Paged Judgment's 3rd page (Penultimate Paragraph), which runs as follows is self-contradictory:

“..... the Complainant being a professional photographer should have exercised proper care and would also be aware of the consequences that may follow if the Camera is exposed to the water

Regard being had to the facts and circumstances of the case coupled with evidence and documents on record, we are of the opinion that there is no deficiency of service or unfair trade practice on the part of the O.P.

In the result the case merit fails....”

A professional photographer is least likely to create a situation to put his expensive Camera to water exposure.

Hence, we cannot agree to such unfounded and uncorroborated formation of opinion of the Ld. District Forum that malfunctioning of the Camera was caused due to exposure and that water exposure was caused due to negligence and lack of exercise of proper care by the Camera Purchaser. If we jump to such a conclusion, surely that will not usher in ensuring neutrality and will not be justice rendering, when there are existence of the cogent tangible trustworthy documents to the contrary.

As such we feel it necessary to set aside that order impugned order for assailing which this Appeal has been preferred for the sake of justice.

We also decide that it will be just and prudent on the part of the sole O.P of the CC/96/2018 to replace that malfunctioning Camera with a new one of the same brand and if that branded Camera (EOS 80D) is not available now, to pay back the purchase price of Rs.69500/- along with interest @ 9% within 15 days from the date of passing this order, in default to pay penalty of Rs.100/- per day.

Also Ordered the Appellant will get Rs.20000/- as compensation cost for loss of mental peace and agony and Rs.10,000/- as litigation cost.

Hence,

ORDERED

That the present appeal being no. A/285/2019 be and the same is allowed in part on contest. The impugned order dated 20.02.2019 passed by the Ld. DCDRC, Kolkata Unit—II in connection with complaint case no. 96 of 2018 is hereby set aside.

The Respondent/Canon India Pvt. Ltd is directed to replace that malfunctioning Camera with a new one of the same brand and if that branded Camera (EOS 80D) is not available now, to pay

back the purchase price of Rs.69500/- along with interest @ 9% within 15 days from the date of passing this order, in default to pay penalty of Rs.100/- per day.

The Appellant will get Rs.20000/- as compensation cost for loss of mental peace and agony and Rs.10,000/- as litigation cost.

The Appellant/Complainant is also entitled to put the Judgment and Order into Execution, if the Respondent/Canon India Pvt. Ltd. fails to comply the above order within the stipulated period.

Thus, the Appeal stands disposed of.

Note accordingly.

**[HON'BLE MR. SUBHRA SANKAR BHATTA]
PRESIDING MEMBER**

**[HON'BLE MR. NITYASUNDAR TRIVEDI]
MEMBER**