

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/18/35
(Date of Filing : 12 Jan 2018)**

1. BEENABI HARIS

CC 06/1610A PANJIRAPOL RD STAR JN MATTANCHERY
KOCHI

.....Complainant(s)

Versus

1. SKODA AUTO INDIA P LTD

PLOT A -1/1 SHENDRA 5 STAR INDUSTRIAL AREA MIDC
AURANGABAD

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 23 Nov 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 23rd day of November 2023

Filed on 12/01/2018

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

C.C.NO. 35/2018

COMPLAINANT

1. Beenabi Haris , CC6/1610A, Panjirapol Road, Star Junction, Mattanchery, Kochi - 2
2. PU Haris, CC6/1610A, Panjirapol Road, Star Junction, Mattanchery, Kochi-2.

(Rep. by Adv. Anil Thomas, ESPEE and Associates, "Rajarajeswary", XXXIX/2846,
KSN Menon Road, Ernakulam, Kochi 682016)

VS

The opposite parties

1. Skoda Auto India Pvt. Ltd. Plot No. A - 1/1 Five Star industrial area, MIDC, Shendra, Aurangabad-431201
2. Marikar Engineers Pvt. Ltd. Skoda Division, Chakkal Bypass

Thiruvananthapuram-695029

(Rep. by Adv. P. Fazil, Jayasree Manon, Saju Thaliyath, V.S. Sreejith, Jithin Paul Varghese, Ann Mary Francis, M/s. Lawyers United, 1st Floor, No. 68/1697, St. benedict Road, Ernakulam 682018)

FINAL ORDER

D.B.Binu, President:

1. A brief statement of facts of this complaint is as stated below:

The complaint has been filed under Section 12 (1) of the Consumer Protection Act, 1986. The complainant purchased a Skoda Superb car from the 2nd opposite party in April 2009, with the expectation of efficient and trouble-free service. The car experienced issues, including excessive noise, after a service in July 2012, but the problem was not resolved despite regular visits to the service center. Eventually, the car was taken to the Thiruvananthapuram service center in January 2016, where it was diagnosed with a gearbox problem. The 2nd opposite party assured that the repair would be covered by the manufacturer (1st opposite party).

However, after several months, the complainant received an estimate of repairs in July 2016, amounting to Rs.5,05,143. Shocked by the cost, the complainant brought the car back to Kochi and discovered that the gearbox oil had not been changed at the required intervals, causing significant damage. The complainant argues that this negligence by the 2nd opposite party led to costly repairs. Additionally, during the car's time at the Thiruvananthapuram service center, it suffered further damages, including ABS sensor damage, missing parts, and other issues.

The complainant claims that due to the negligence and irresponsibility of both the 1st and 2nd opposite parties, they should compensate for the estimated repair costs, damages to the car, and the inconvenience caused. They also seek compensation for mental agony and expenses incurred during the car's non-usage. The complainant sent legal notices to both parties, but their responses did not address the core issues raised.

The complainant seeks a total compensation of Rs.8,05,143 from both the 1st and 2nd opposite parties, holding them jointly and severally liable for the issues and damages.

2). Notice

Notices were issued by the Commission to both opposite parties, and both parties acknowledged receipt of the notices. While the first opposite party did not submit their response, the second opposite party filed their version.

3)THE VERSION OF THE SECOND OPPOSITE PARTY

The second opposite party denies most of the allegations made in the complaint and asserts that the complaint is not maintainable due to being filed beyond the period of limitation. They argue that the vehicle was purchased by the complainant in April 2009 and has been used since then. The complaint is, therefore, time-barred.

The second opposite party states that the vehicle was delivered to the complainant in a satisfactory condition with relevant documents such as the owner's manual and warranty card. According to the warranty terms, defective parts were to be replaced within the two-year warranty period from the date of purchase, but no such replacements were required. The complainant's vehicle had exceeded the warranty period by 2011, indicating substantial usage and no manufacturing defects.

They claim that the vehicle was serviced to the satisfaction of the complainant on previous occasions, and when the vehicle exhibited issues in July 2012, those problems were rectified. In January 2016, when the ABS indicator issue arose, the second opposite party informed the complainant that the gearbox had normal wear and tear and required replacement. They advised the complainant to seek repairs at a nearby service center, but the complainant chose to bring the vehicle to Thiruvananthapuram, requesting the second opposite party to negotiate with the manufacturer for a goodwill-based gearbox replacement. The manufacturer declined due to the vehicle's age and mileage, stating no manufacturing defects were found.

The second opposite party denies the allegations of negligence regarding the gearbox oil change, stating that they had advised the complainant to replace the gearbox oil, but the complainant declined. They argue that the burden of proof lies with the complainant to establish the allegations.

Additionally, the second opposite party denies damaging the ABS sensor or other parts of the vehicle and refutes the claim that the complainant experienced severe mental agony. They argue that they have responded to the legal notices and that the complainant is not entitled to any relief or compensation.

In summary, the second opposite party denies the allegations of manufacturing defects, deficiency of service, or unfair trade practices and requests that the complaint be dismissed with costs.

4) Evidence

The complainant had produced 11 documents that were marked as Exhibits A-1 to A-11. The complainant was examined as PW1.

Exhibit A1: True copy of the RC of the car KL-43B-0034.

Exhibit A2: True copy of the service history card of the car as of 24.1.17.

Exhibit A3: A true copy of the estimate of repairs dated 25.7.16 issued by the 2nd opposite party.

Exhibit A4: Service cost of Skoda car at 60,000 kms or 4th year as provided by the company.

Exhibit A5: Service cost of Skoda car at 1,20,000 kms or 8 years as provided by the company.

Exhibit A6: Stipulations of VOLKSWAGEN regarding changing the gearbox oil are provided on their official website.

Exhibit A7: True copy of the legal notice dated 18.2.17 sent to the opposite party by the complainant.

Exhibit A8: True copy of the reply dated 20.3.17 sent by the 1 opposite party to the complainant.

Exhibit A9: True copy of the reply notice sent to the complainant by the second opposite party dated 4.5.17.

Exhibit A10: True copy of the undated reply sent by the 1st opposite party to the complainant.

Exhibit A11: True copy of the Service Schedule/Manual.

During the cross-examination of PW1, the opposite parties raised objections to Exhibits A4, A5, and A6.

5) The main points to be analyzed in this case are as follows:

- i) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?
- ii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iii) Costs of the proceedings if any?

6) The issues mentioned above are considered together and are answered as follows:

As per Section 2 (1) (d) of the Consumer Protection Act, 1986.

The complainant alleges that both the 1st and 2nd opposite parties are responsible for negligence and irresponsibility, and they should be held liable for covering the estimated repair costs, damages to the car, as well as the inconvenience experienced. Additionally, they are seeking compensation for mental distress and expenses incurred during the period when the car was unusable.

The learned counsel for the complainant submitted that the 1st complainant (wife of the 2nd complainant), purchased a Skoda Superb car in April 2009, registered as KL-43B-0034. The car cost Rs. 24 lakhs. The purchase was influenced by the opposite parties' representations of the car's efficiency, low maintenance cost, and good after-sales service. The 1st opposite party is the car manufacturer, and the 2nd opposite party is the authorized sales and service agent in Kochi.

The complainants regularly serviced the car at the 2nd opposite-party service center, as indicated by the service history (**Exhibit A2**).

In July 2012, due to excess noise, the car was taken to the 2nd opposite party for service, with some improvement but the issue persisted. The complainant continued to service the car at regular intervals. In January 2016, they were informed about a gearbox issue and were advised that the 1st opposite party would replace the necessary parts at no cost to the complainant. However, after a month, no response was received. On July 25, 2016, an estimated repair cost of Rs. 5,05,143/- was presented (**Exhibit A3**).

Frustrated by the lack of response, the complainant brought the car back to Kochi. Later, they discovered that Manikandan Automobiles was the new authorized service center for Skoda cars in Kochi, and the car was taken there in September 2016. Despite some repairs, the car's condition did not improve. On January 9, 2017, the gearbox oil was changed, but the car's condition did not improve. The personnel at Manikandan informed the complainant that failing to change the gearbox oil at regular intervals could damage the gearbox. Upon checking the service history, it was found that the 2nd opposite party had not changed the gearbox oil at the required intervals.

The complainant argues that the delay in discovering the issue was due to the lack of information provided to them, as they relied on the service schedule (**Exhibit A11**) that did not show the work done. They contend that if the gearbox oil had been changed as required, the costly damage to the gearbox could have been prevented.

The complainant also points to information on the Skoda company's website (**Exhibits A4 and A5**), which recommends periodic gearbox oil changes to prevent costly repairs. They argue that the 2nd opposite party did not follow these guidelines, leading to the damage. The complainant further asserts that the damage was not due to normal wear and tear, as the service schedule did not specify gearbox replacement after a certain mileage.

Regarding the damages caused while the car was with the 2nd opposite party service center in Thiruvananthapuram, the complainant claims that the ABS sensor, wheel net cap, ceiling, door handle, back logo, and seat adjustment control were damaged due to the car being left in the open without any cover. They argue that the delay in providing the repair estimate exacerbated the damage. The complainant also states that they suffered mental and physical distress during this period.

The complainant seeks compensation totalling Rs. 8,05,143/- from both the 1st and 2nd opposite party, as they believe the damage to the gearbox, negligence, and damages incurred while the car was with the 2nd opposite party are the responsibility of both parties. Additionally, they request Rs. 1,00,000/- for mental and physical suffering caused by the opposite party's actions.

The learned counsel representing the second opposite party submitted that the complainant purchased the vehicle in April 2009 and used it continuously, and it is claimed that the vehicle was not properly serviced at due intervals. The opposite parties maintain that the warranty offered by the manufacturer, the 1st opposite party, covers the replacement of defective parts within two years from the date of purchase. The vehicle exceeded this warranty period in 2011, indicating substantial use without manufacturing defects.

According to the opposite parties, the vehicle was serviced to the complainants' satisfaction when they brought it to the service center in July 2012 for a minor issue. In January 2016, after

approximately 3.5 years, the vehicle was brought to the service center with a different problem, and it was then suggested that the gearbox needed replacement. The service center, aware that the gearbox replacement would be costly, tried to negotiate with the manufacturer on the complainant's behalf, but the request was denied due to the high mileage and age of the vehicle.

The opposite party denied the allegations that they failed to change the gearbox oil, causing damage, stating that the complainant had declined to change the oil due to the associated expenses, especially since the warranty period had expired. They argue that replacing the gearbox oil is not connected to gearbox replacement based on the vehicle's mileage and age. Furthermore, they reject the claim that the ABS sensor was damaged by their personnel.

The opposite party contends that the burden of proof lies with the complainant to establish manufacturing defects, and they argue that no expert evidence has been presented to support the allegations. They refer to previous court decisions that emphasize the need for expert opinions to prove manufacturing defects.

Regarding the damages allegedly incurred while the vehicle was with the opposite parties' service center, they refute these claims as false and state that the complainant failed to produce any evidence to prove their case. They deny responsibility for any missing parts or defects found in the car.

Lastly, the opposite parties dispute the complainant's claim of mental agony and suffering and request that the complaint be dismissed with exemplary costs.

In summary, the opposite party argues that the complaint lacks merit, as they believe there is no evidence to support allegations of manufacturing defects, deficiency of service, or unfair trade practices on their part. They request that the complaint be dismissed.

The counsel for the second opposite party argued that the burden of proof lies with the complainant to substantiate the allegations made in the complaint, and this should be done with the assistance of a technical expert to satisfy this Commission. The complainants, however, have not fulfilled this requirement. **In the case of Md. Hassan Khalid Haidar vs. General Motors India Pvt Ltd & Ors. (2018)**, as reported in the All-MR Journal, Volume 6, the National Commission established that proving a manufacturing defect in a vehicle necessitates the presentation of expert evidence or the filing of an application before the District Forum to appoint an expert for vehicle examination. Expert opinion is a crucial prerequisite for establishing manufacturing defects, as affirmed by legal precedents such as **EID Parry vs. Baby Benjamin (1992) CPJ 279**, **Tata Motors vs. Sunil Bhasin III (2008) CPJ 111**, **Sukhvinder Singh vs. Classic Automobile (2013) CPJ 47**, **Ajith Chit Fund Pvt Ltd vs. Teleco I (2007) CPJ 204**, and **Swaraj Mazade vs. P.K Chak Kapoor II (2005) CPJ 72**, which all emphasized the necessity of expert opinions in such cases.

Furthermore, the contents of the complaint suggest that the complainant is more concerned about the high service costs rather than a specific deficiency in service. The second opposite party is not privy to the details of repairs and services conducted by Manikandan Automobiles, the current service provider for Skoda vehicles in Cochin. The complainants have not presented any documents to substantiate their claim of service deficiency. Although the complainants allege that service personnel at the mentioned service center acknowledged improper service, they have failed to produce any executive from that service center as a witness. Consequently, allegations

regarding the second opposite party's failure to provide the required service are not substantiated and cannot be upheld.

In this case before the Commission, the complainant has invoked Section 12(1) of the Consumer Protection Act, 1986, claiming that the 1st and 2nd opposite parties have engaged in deficient service and unfair trade practices. The Commission has thoroughly reviewed the submissions, exhibits, and pertinent legal precedents. After careful evaluation of the complaint, the responses and arguments put forth by both parties, the provided evidence, and applicable laws and precedents, the Commission presents the following summary:

- A. **Burden of Proof for Manufacturing Defect:** The complainant alleges a manufacturing defect, but as per the established precedents in cases like **Md. Hassan Khalid Haidar vs. General Motors India Pvt Ltd & Ors. (2018)**, expert evidence is crucial to substantiate such claims. The complainant has not provided expert testimony or evidence to establish a manufacturing defect. Therefore, the complaint lacks the requisite proof to establish a manufacturing defect.
- B. **Warranty Period:** The vehicle was purchased in April 2009, and the warranty period expired in 2011. The issues complained of arose significantly after the expiration of the warranty period. This suggests that the vehicle was used without notable defects for a substantial duration, weakening the claim of inherent manufacturing defects.
- C. **Damages While in Custody of Service Center:** The complainant alleges additional damages to the car while in the custody of the Thiruvananthapuram service center. However, there is insufficient evidence to conclusively prove that these damages occurred due to negligence or misconduct by the service center. Without concrete evidence, these claims remain unsubstantiated.
- D. **Mental Agony and Inconvenience:** While the inconvenience and distress to the complainant are acknowledged, the claim for compensation for mental agony is not supported by substantial evidence to quantify such a claim.

In view of the above, the complaint is found lacking in substantial evidence to prove deficiency in service or unfair trade practice on the part of the opposite parties. After careful consideration, the above issues (i to iii) have been found to be unfavorable to the complainant. The case presented by the complainants is considered to be without merit. As a result, the following orders have been issued. The issues raised pertain largely to the expiry of the warranty period, normal wear and tear, and a lack of conclusive evidence to establish negligence or misconduct by the opposite parties. Accordingly, the complaint is dismissed. However, considering the circumstances, no order as to costs is passed.

Pronounced in the Open Commission on this the 23rd day of November, 2023.

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Assistant Registrar

Appendix

COMPLAINANT'S EVIDENCE

Exhibit A1: True copy of the RC of the car KL-43B-0034.

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Exhibit A11: True copy of the Service Schedule/Manual.

OPPOSITE PARTY'S EVIDENCE

Nil

kp/

Despatch date:

By hand:

by post:

C.C. No. 35/2018

Order date: 23/11/2023

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**