

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM**Dated this the 27<sup>th</sup> day of November 2023.

Filed on: 07/01/2023

**PRESENT**

Shri.D.B.Binu

Shri.V.Ramachandran

Smt.Sreevidhia.T.N

President

Member

Member

**CC No. 11/2023****COMPLAINANT**

Baby C. C, S/o Chacko, Chenthalakkattil House, Kinginimattom P. O,  
Kolenchery, Ernakulam District, PIN:682311 M- 94474605 30

(Adv.Geevan.T.Charles, Kodyampara Building, Kolenchery P.O.,  
Ernakulam District, Pin-682 311)

VS

**OPPOSITE PARTY**

M/s Vision Motors Pvt. Ltd., Dealer of Honda Care, Mekkadambu P.O.,  
Muvattupuzha, Ernakulam District, PIN: 686316.

**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 35 of the Consumer Protection Act, 2019. The complainant purchased a Honda Amaze Petrol car from the opposite party on 28/09/2018. At the time of purchase, the opposite party collected an amount for an "**Extended Warranty Scheme**" and "**Roadside Assistance**" with the promise that damaged car parts would be replaced for free under these schemes. The extended warranty is valid from 03/10/2021 to 02/10/2022, and roadside assistance is covered until 04/10/2022.

On 27/09/2022, the complainant's car broke down due to bearing issues, and when the complainant requested roadside assistance, the opposite party denied it. Instead, they assured the complainant that the

problem would be covered under the extended warranty. However, after the repair work, the opposite party demanded an additional payment of Rs. 8,100 and denied the extended warranty benefits, claiming that they had expired. The complainant had no choice but to pay to get the car released from the service centre.

The complainant alleges a deficiency of service and a breach of assurance by the opposite party. Despite issuing a lawyer's notice on 25/10/2022, the opposite party did not respond. Therefore, the complainant has approached the Commission seeking compensation.

The complainant requests relief in the form of reimbursement of Rs. 8,100 for the extended warranty benefit, Rs. 5,000 for denying roadside assistance, Rs. 10,000 for mental agony and damages, Rs. 1,000 for the notice charge, and the cost of the complaint, totaling Rs. 24,100. Additionally, they request the opposite party to pay Rs. 10,000 as the cost of the complaint.

## **2) Notice**

The notice to the opposite party was sent by the commission. However, despite accepting the notice, the opposite party did not file a version, and as a result, it is set ex parte.

## **3) Evidence**

The complainant had filed an ex-parte proof affidavit and 5 documents that was marked as Exhibits-A-1-A-5.

**Exhibit A-1:** Original of the Extended Warranty Registration.

**Exhibit A-2:** Copy of the Tax invoice of Extended Warranty dated 03/10/2018.

**Exhibit A-3:** Copy of the Honda Car Roadside assistance certificate dated 03/10/2018.

**Exhibit A-4:** Copy of the Tax invoice dated 28/09/2022.

**Exhibit A-5:** Copy of the Lawyer Notice dated 25/10/2022.

**4) The main points to be analysed in this case are as follows:**

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?
- iv) Costs of the proceedings if any?

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

In the present case in hand, as per Section 2(7) of the Consumer Protection Act, 2019, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. A Copy of the Tax invoice of the Extended Warranty dated 03/10/2018 issued by the opposite party. The receipt evidencing payment to the opposite party (**Exhibit A-2**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 2019.

We have heard Sri.**Geevan T Charles**, the learned counsel appearing for the complainant, submitted that the complainant purchased a Honda Amaze Petrol car from the opposite party on 28/09/2018. Alongside the car's purchase, the complainant paid Rs. 5143/- for an "Extended Warranty Scheme" and Rs. 4834/- for "Roadside assistance," with both services promised to provide free replacements and assistance respectively. The validity of these services extended from 03/10/2021 to 02/10/2022 for the warranty and until 04/10/2022 for the assistance. Relevant documents for these services are produced as **Exhibit A1, A2, and A3**.

On 27/09/2022, the car faced a breakdown due to a bearing complaint. When taken to the opposite party's service centre, the complainant's request for road side assistance was denied. Even though the opposite party initially assured coverage under the extended warranty, they later charged Rs. 8100/-, falsely claiming the warranty had expired. To retrieve the car, the complainant had to pay the demanded amount. The tax invoice for this payment is marked as **Exhibit A4**.

The complainant then issued a lawyer's notice to the opposite party on 25/10/2022, demanding compensation. The opposite party failed to respond, leading the complainant to seek justice from this Commission. The notice is presented as **Exhibit A5**.

The complainant seeks a reimbursement of Rs. 8100/-, damages of Rs. 5,000/- for denied roadside assistance, Rs. 10,000/- for mental distress, Rs. 1,000/- for notice charges, and the cost of this complaint. In total, the complainant requests the Commission to direct the opposite party to pay Rs. 1,24,100/- and an additional Rs. 10,000/- for complaint costs.

The evidence presented included an ex-parte proof affidavit filed by the complainant, and it was unchallenged by the opposite party. Therefore, the complainant's claims were considered credible and supported by the evidence. Therefore, the complainant requests the commission to grant the relief sought, including compensation for mental agony and unfair trade practices.

The opposite parties' conscious failure to file their written version in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite party. We have no reason to disbelieve the words of the complainant as against the opposite party. **The**

**Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

The opposite party, despite being served with the notice, did not challenge the allegations made by the complainant. This conscious failure to file their written version is considered an admission of the allegations against them. As per legal precedent, this stance of the opposite party is not credible, and we have no reason to disbelieve the complainant's claims in this matter.

The complaint before this Commission arises from a dispute between the complainant, who purchased a Honda Amaze Petrol car from the opposite party, and the opposite party, who sold the car along with extended warranty and roadside assistance services. The complainant alleges that the opposite party breached their promise by denying roadside assistance and charging for repairs purportedly covered by the extended warranty. The matter has been heard and considered by this Commission, and the following issues have been addressed:

**Issues Considered:**

**ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?**

The complainant has presented evidence, including the extended warranty registration (**Exhibit A-1**), the tax invoice for the extended warranty (**Exhibit A-2**), and the Honda Car Roadside Assistance certificate (**Exhibit A-3**), which clearly establish that the complainant paid for these services at the time of purchasing the car. Additionally, the complainant has provided the tax invoice dated 28/09/2022 (**Exhibit A-4**), which shows that the opposite party charged the complainant for repairs that were initially promised to be covered by the extended warranty.

The complainant's testimony, supported by the documentary evidence, establishes that the opposite party engaged in a deficiency of service and

unfair trade practice by denying roadside assistance and charging for warranty-covered repairs.

**iii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?**

Considering the evidence provided and the circumstances of this case, it is evident that the complainant has suffered both monetary loss and mental distress due to the actions of the opposite party. The complainant has requested compensation for the monetary loss, mental distress, notice charges, and the cost of filing the complaint.

**Conclusion:**

Considering the facts and evidence presented, it is clear that the complainant is entitled to relief. The opposite party's actions amounted to a deficiency in service and unfair trade practice, causing financial loss and mental distress to the complainant. The conscious failure of the opposite party to challenge the allegations further supports the complainant's claims.

**[(M/s.) Reprographics Division HCL Ltd. v. Sanjay Kumar Sharma, 1999 (3) CPR 195 (SC) (H.P.)]. Held that:-**

"In such a situation, the opposite parties are liable for breach of warranty by not rendering proper and appropriate service during the warranty period. We are not in a position to say whether the machine had a manufacturing defect or not, but it is certainly apparent from the surrounding circumstances that the machine has not been working satisfactorily from its very inception and the opposite parties have failed to render satisfactory service during the warranty period and there

is a clear breach of warranty and the complainant is liable to be compensated."

The established legal principle is that when a service provider fails to honour the commitments made under a service contract, it amounts to an unfair trade practice, and the consumer is entitled to compensation for any resulting loss or mental distress.

This precedent supports the complainant by establishing the principles of consumer protection and fair-trade practices. It emphasizes that consumers are entitled to receive the benefits they have paid for and that a service provider's failure to honour these commitments can result in compensation for the consumer. Additionally, the case law regarding the admission of allegations without a written version reinforces the credibility of the complainant's claims in the absence of a response from the opposite party.

We find the issue Nos. (II) to (IV) are also found in favour of the complainant for the serious deficiency in service that happened on the side of the opposite party. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss, etc. due to the negligence on the part of the opposite party.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The Opposite Party shall reimburse the complainant a total amount of Rs.13,100/- (Rupees Thirteen thousand), comprising Rs.8,100/- (Rupees Eight thousand and one hundred) for the extended warranty benefit and Rs.5,000/ (Rupees five thousand) for the denied roadside assistance.
- II. The Opposite Party shall pay Rs.10,000/- (Rupees ten thousand) as compensation due to the deficiency in service and unfair trade practice

committed by the opposite party, and for the mental agony and physical hardships sustained by the complainant.

III. The Opposite Party shall also pay the complainant Rs.10,000/- (Rupees ten thousand only) towards the cost of the proceedings.

The Opposite Party shall be liable for the above-mentioned directions, which shall be complied with by the Opposite Party within 30 days from the date of the receipt of a copy of this order. Failing to do so, the amount ordered in (i) and (ii) above shall attract interest at a rate of 9% from the date of filing the complaint (07.01.2023) until the date of realization.

Pronounced in the Open Commission on this 27<sup>th</sup> day of November 2023

  
D.B.Binu, President

  
V.Ramachandran, Member

  
Sreevidhya T.N., Member