

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

30th day of April 2024
CC 494/18 filed on 06/09/18

- Complainant : Sanjeev N.R., S/o Rajappan, Naduvilavalappil House,
P.O. Kuttanellur, Thrissur.
(By Advs. Adithyan Ezhappilly & K. Indira Rajan,
Kochi)
- Opposite Parties : 1) Bharat Benz, AutoBahn, Trucking Corporation Pvt.
Ltd., Rep. by Managing Director, VIII/24 B, NH-47,
Kottayi, Nr. Athani Jn., Nedumbassery,
Ernakulam – 683 585.
(By Advs. Jagan Abraham M George, & Jaison
Antony, Ernakulam)
- 2) Daimler, India, Commercial Vehicle Pvt. Ltd.,
Unit 21, 2nd Floor, Campus 3B, RMZ Millennia
Business Park, Dr. MGR Road, Perungudi,
Chennai – 600 096, Tamil Nadu.
(By Adv. Sudheesh K Menon, Vatanappally)

FINAL ORDER

By Sri. Ram Mohan R, Member :

The complaint in brief as averred :

The complaint is filed under Section 12(1) of Consumer Protection Act, 1986. The complainant who statedly runs for livelihood the business of transporting vegetables from other states like Karnataka & Tamil Nadu to the districts of Ernakulam and Thrissur, on 22/06/17 purchased from the first opposite party dealer a “Bharat Benz – 1617 lorry” which was manufactured by the 2nd opposite party. Statedly, the Chasis No. & the Engine No. of the vehicle in question are MEC0774CHP019899 & 400924D0009551 respectively. In view of its proneness to speedy and natural decay, the complainant states that

timely delivery of vegetables, matters decisively and claims to have purchased the vehicle in question placing reliance on the assurance of quality given by the 1st opposite party dealer and also on the goodwill of the 2nd opposite party manufacturer. But to the dismay of the complainant, in two months of purchase of the vehicle, it started frequently exhibiting low pick-up, reducing its speed to about 20 km/hr. In addition to the fault of low pick-up, the vehicle also statedly showed problems relating to PCU and AdBlue Motor. Though the 1st opposite party effected service to the vehicle several times upon informing them of all these defects, the condition of the vehicle allegedly remained the same. The complainant claims to have spoilt several business days, owing to the idling of the vehicle while being entrusted to the 1st opposite party for such services. Moreover, the complainant claims to have suffered a loss of Rs.1.5 lakh by way of decay of vegetables owing to the delay caused in delivery which was statedly attributed to the malfunctioning of the vehicle. The complainant also states to have suffered a financial loss of Rs.1 lakh consequent to the extra consumption of diesel resulted from the problem of low pick-up. Under such circumstances, the complainant who suspected manufacturing defect of the vehicle and approached the 1st opposite party seeking remedy, was assured of sending the vehicle to the 2nd opposite party for rectification of the alleged defects, for a period of 20 days towards reparation of the loss arising from which the 1st opposite party also statedly assured payment of a compensation @ Rs.7,500/- per day, as well. The complainant claims to have received from the opposite parties a sum of Rs.1,30,000/- towards the said compensation. The complainant also states that his sister concern namely “M/s Indian vegetables and super market” purchased one more such vehicle, believing the opposite parties’ assurance of fault-free future performance of the complainant’s vehicle. Allegedly, the complainant’s vehicle started exhibiting the same problem again. The complainant therefore alleges manufacturing defect in the vehicle. A lawyer notice caused by him statedly was replied with denial of manufacturing defect.

Hence the complaint. The complainant claims that the opposite parties' payment of a compensation of Rs.1,30,000/- while receiving the vehicle in question for servicing is tantamount to admission of manufacturing defect. The complainant prays for an order directing the opposite parties to replace the vehicle, apart from other reliefs of compensation and costs.

2) Notice :

Having been noticed by the Commission, both the opposite parties separately filed their written versions and contested the complaint.

3) Version of the opposite parties

1st opposite party :

The purchase of the vehicle in question is not disputed, but the complainant's being a consumer under the Consumer Protection Act is disputed, as the vehicle in question is used for a commercial purpose. They also dispute the complainant's pleadings regarding livelihood, as well, for the reason that he has other business or other avenues of income. The 1st opposite party alleges that the complainant has a stake in the establishment namely 'M/s Indian Vegetables and Super Market'. It is also contended that the purchase of a 2nd vehicle by the complainant's said company namely "M/s Indian Vegetables and Super Market" also proves that the provision of exemption i.e. claim regarding livelihood, will not apply to him. The alleged manufacturing defect is also denied and contends that the malfunctioning of the vehicle is due to the complainant's having not maintained the requisite level of 'AdBlue', which in turn resulted in generating "error codes". They affirm that towards complying with the mandatory BS IV norms with a view to reducing smoke emission, continual maintenance of the requisite level of 'AdBlue' is very crucial for the flawless performance of the vehicle and also that these aspects were informed to the complainant at the time of purchase of the vehicle. They also state that the

2nd opposite party's payment of Rs.1,30,000/- through them to the complainant was only a gesture of being considerate, as the complainant was not able to use the vehicle for 22 days while it was taken to Chennai for investigation. It is also statedly their stance that they on inspection replaced NOx sensor, electronic control unit (ECU), fuel pump and also injectors, free of cost, in view of customer relation and good will. They allege the lack of careful maintenance of the required level of AdBlue on the part of the complainant / drivers engaged by him, to be the reason for the malfunctioning of the vehicle in question and therefore deny any manufacturing defect in the vehicle. Thus the 1st opposite party attempts to rebut the complaint.

2nd Opposite party :

The 2nd opposite party, manufacturer also admits the complainant's purchase of the vehicle in question, but disputes the maintainability of the complaint citing the complainant's use of the vehicle for a commercial purpose and challenges the pleading of his livelihood, on the same ground as raised by the 1st opposite party. The 2nd opposite party manufacturer also claims that the complainant's laxity in properly maintaining the requisite level of 'AdBlue' to be the major reason for the malfunctioning of the vehicle in question. Such negligence on the part of the complainant is stated to be tantamount to non-maintenance of the vehicle and the malfunctioning resulting from such lapses is argued to be not covered under warranty. They also dispute the complainant's allegation of manufacturing defect for want of any expert's opinion in that direction. Moreover, the payment effected to the complainant for the period while the vehicle was taken for testing at the manufacturing plant in Chennai, is also admitted by the 2nd opposite party, only to the extent that the same was done in the interest of good will. The 2nd opposite party manufacturer also thereby denies the alleged manufacturing defect of the vehicle in question.

4) Evidence :

The complainant produced documental evidence that had been marked Exts. A1 to A13, apart from affidavit and notes of argument.

The 1st opposite party produced documental evidence that had been marked Ext. B1 (a) to B1 (e), apart from affidavit and notes of argument. The 2nd opposite party adduced no evidence, but version and notes of arguments.

The report submitted by the Expert Commissioner appointed by the Commission on application by the complainant to that effect, is marked Ext. C1.

5) Deliberation of facts and evidence of the case :

The Commission has very carefully examined the facts and evidence of the case. Ext. A1 (SP) is copy of Invoice No. VES/17-18/0152 dtd. 22/06/17 issued by the 1st opposite party in favour of the complainant, towards the sale of “1617R 4X2 5100 BS IV”, for a sum of Rs.18,82,339/-. Ext. A2 is copy of the Certificate of Registration in respect of Vehicle No. KL 08BM 6034 (BHARAT BENZ 1617R BS IV). Ext. A3 (SP) is a printout regarding date wise working details. Ext. A4 is printout of the email trail in respect of the communication from the complainant to various email Ids ending with the domain “@autobahntrucking.com”, the sender’s email Id being indianvegssupermarket@gmail.com. Ext. A5 is copy of complainant’s lawyer notice dtd. 13/04/18 addressed to the 1st opposite party. Ext. A6 is copy of complainant’s lawyer notice dtd. 23/07/18 addressed to the 1st opposite party. Ext. A7 is Postal Receipt dtd. 25/07/18. Ext. A8 is Postal Acknowledgment card. Ext. A9 is complainant’s lawyer notice dtd. 23/07/18 addressed to the 2nd opposite party. Ext. A10 is Postal Receipt. Ext. A11 is Postal Acknowledgement card. Ext. A12 is the 1st opposite party’s reply notice dtd. 21/08/18. Ext. A13 is the 2nd opposite party’s reply notice dtd. 22/08/18.

Ext. B1(a) is copy of the extract of the minutes of the 1st opposite party's Board Meeting held on 15/11/2023 authorising an agent to further CC 494/18 before the Commission. Ext. B1 (b) comprises Job Slip No. 3701 dtd. 17/07/18 issued by the 1st opposite party, satisfaction note dtd. 18/07/18 and Invoice No.JBC1012BD1801373 DTD.18/07/18 issued by the 1st opposite party. Ext. B1(c) comprises Job Slip No.2543 dtd.14/04/18 issued by the 1st opposite party and Invoice No.JIN1012BD1800158 DTD. 14/04/2018 issued by the 1st opposite party. Ext. B1(d) comprises Job Slip No.4539 dtd. 04/10/18 issued by the 1st opposite party and Invoice No.JIN1012BD1802357. Ext. B1 (e) comprises Job slip No.23825 dtd.17/04/23 issued by the 1st opposite party.

Ext. C1 is the report submitted by the Expert Commissioner appointed by the Commission.

6) Points of deliberation :

- i) Maintainability ? If yes,
- ii) Whether the alleged manufacturing defect is proved ?
- iii) Whether there is any deficiency in service or unfair trade practice on the part of the opposite parties ?
- iv) Whether the complainant is entitled to receive any compensation from the part of the opposite parties ? If so its quantum ?
- v) costs ?

7) Point No.(i) :

The opposite parties dispute the Commission's territorial jurisdiction to decide the complaint, whereas the complainant claims to be engaged in the business of transporting vegetables to the districts of Thrissur & Ernakulam and also that the vehicle in question went faulty many times within the district of Thrissur. The opposite parties hardly produced any evidence to prove their

dispute, though they baldly dispute the Commission's territorial jurisdiction to hear the complaint. The opposite parties having disputed the Commission's territorial jurisdiction, the onus to prove the same lies with them. In the absence of any evidence to the contrary, we find no reason to disbelieve the complainant's contentions regarding the vehicle's operations and other incidents related thereto, that are claimed to have taken place in the District of Thrissur. As the cause of action statedly arose in part in the district of Thrissur, we are of the view that the Commission derives the territorial jurisdiction to decide the complaint.

Needless to mention, the 2nd opposite party's contention regarding want of expert Report has turned infructuous, given the Commission's having appointed a competent Expert vide order in IA 367/18 and obtained Report thereon.

Both the opposite parties also dispute the complainant's being a consumer, primarily in view of the vehicle's being used for a commercial purpose. Allegedly, the complainant is having stake in another company namely M/s Indian Vegetables and Super Market. It is also alleged that the complainant is the owner of several vehicles used for commercial purpose. The opposite parties also dispute the complainant's claim of his doing the business for his livelihood. Evidently, explanation to Section 2(1)(d) of the Consumer Protection Act, 1986 which is an exception to an exclusion, brings within the definition of "consumer" a person who avails services for commercial purposes, if such services are availed by him exclusively for the purpose of his livelihood by means of self employment. The term 'commercial purpose' is not defined in the Act. "Commercial" denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary). It is not the value of the goods that matters, but the purpose to which the goods bought or the services availed are put to. In the

complaint itself, the complainant states that he runs the business to earn livelihood. The complainant also swore by affidavit that he is running the business of transportation of vegetables for earning his livelihood. During cross examination by the opposite party, as well, he deposed that he has no business other than this. Axiomatically, there would be varied eventualities which cannot be ruled out, even if the complainant did own more number of commercial vehicles. He might have been using the entire paraphernalia for running his business for the sake of his livelihood. The opposite parties failed to cogently prove the contrary rather than baldly alleging the complainant's stake in various other establishments. As it is the opposite parties who pleaded that the service was obtained by the complainant for a commercial purpose and also disputed the complainant's claim of running his business for livelihood, the onus to prove the same would have to be borne by them. The opposite parties failed to establish their contention in this regard, as well. All considered, point No.(i) is proved in favour of the complainant.

8) Point No.(ii) :

One of the major contentions of the complainant is that the 2nd opposite party's payment of Rs.1,30,000/- to him to make up the period of idling of the vehicle, while it was taken to the 2nd opposite party's premise in Chennai, is tantamount to their admission of the manufacturing defect of the vehicle. This contention of the complainant cannot be taken at its face value, while it is weighed in terms of a reasonable degree of prudence. Manufacturing defect alleged in any product is to be established empirically. The complainant has hardly produced any evidence to prove that the 2nd opposite party manufacturer's payment of Rs.1,30,000/- to him, was towards their redemption of any fault on their part, or to disprove the opposite parties' claim that the said payment was only a gesture of their being compassionate and considerate to the complainant.

The complainant in the case at hand, argues that the ‘low pick-up’ exhibited by the vehicle is attributed to its manufacturing defect, whereas the opposite parties affirm that the same is attributed to the carelessness exhibited by the complainant / his crew in persistently maintaining the requisite level of ‘AdBlue’, the deficiency of which would cause error codes and which eventually would result in the low pick-up of the vehicle. As stated supra, an Expert Commissioner (Motor Vehicle Inspector, Thrissur) was appointed by the Commission as per the order in IA 367/18 that was initiated by the complainant. The Expert Commissioner affirms that he drove the vehicle and found that the vehicle’s acceleration is not sufficient when compared to similar vehicles. The Commissioner by his Ext.C1 report also states that the vehicle in question is having some manufacturing defect in the after treatment system meant for controlling atmospheric pollution. The case at hand assumes a peculiar nature where the complainant alleges manufacturing defect in the vehicle owing to its exhibiting ‘low pick up’, while the opposite parties admit the vehicle’s exhibiting ‘low pick up’ which according to them is attributed to the complainant’s carelessness in properly maintaining the requisite level of ‘AdBlue’. The Expert Commissioner is expected to arrive at his conclusion, analysing and evaluating these aspects, which are specific to the case at hand. On carefully going through the Ext. C1 Report, it becomes explicit that the Expert Commissioner arrived at his conclusion regarding manufacturing defect, mainly because the representatives of the opposite parties who took part in the inspection process could not answer his queries, and also owing to the fact that many break down services were seen effected to the vehicle in question which was statedly noticed by him from his perusing the service records. The Expert Commissioner is seen to have not empirically established his conclusion regarding the manufacturing defect in the ‘after treatment system’ of the vehicle in question. The Expert Commissioner ought to have furnished the scientific

and technical criteria for testing accuracy of his conclusions so as to enable us to form our independent judgment by the application of those criteria, for the compilation of such a comprehensive report, both the complainant and the opposite parties were duty bound to suitably facilitate the Expert Commissioner.

As stated supra, the complainant who alleges manufacturing defect of the vehicle had the bounden duty to instruct the Expert Commissioner with appropriate points to unearthing the same, whereas the opposite parties who aver the complainant's carelessness or neglect in the proper maintenance of 'AdBlue' level to be the reason for the vehicle's low pick up and not its manufacturing defect, also had a equivalent onus to prove their stance by suitably instructing the Expert Commissioner at the time of his inspecting the vehicle in question. On scrutiny of the work memos issued by the complainant as well as the opposite parties, which were attached to Ext. C1 report, it is unveiled that neither the complainant who alleged manufacturing defect of the vehicle nor the opposite parties who attempted to rebut it, had put in any competent effort to raise diligent questions through the work memos, concerned, that are capable of unearthing the alleged manufacturing defect or robustness, as the case may be, of the vehicle in question. The work memo issued by the complainant is seen lacking questions that are pointed to the peculiar nature of the plaint and defence, rather than questions in respect of the vehicle's exhibiting 'low pick up'. The work memo issued by the 2nd opposite party is seen to mainly bear a set of questions meant to assess the level of knowledge and erudition of the expert only, which the Commissioner in his report appears to have almost answered, but hardly any question or instruction at all to be followed by the Expert Commissioner with a view to substantiating the claimed robustness of the vehicle in question. We are, therefore, inclined to find that there is negligence and carelessness on the part of the complainant who alleged manufacturing defect in the vehicle and contributory negligence and

carelessness on the part of the opposite parties who claimed robustness of the vehicle in question, in so far as asking pertinent questions or issuing diligent instructions through work memos with a view to unearthing manufacturing defect or robustness, as the case may be, of the vehicle in question is concerned. The manufacturing defect of the vehicle is alleged by the complainant. It is trite law that *one who alleges must prove*. Primarily, the onus of proving the alleged manufacturing defect would have to be borne by the complainant. In the instant case, the complainant fails to unequivocally establish the alleged manufacturing defect of the vehicle. Consequently, in the absence of any empirical establishment of the manufacturing defect stated in Ext. C1 report, we are constrained to hold that the complainant's allegation in respect of manufacturing defect of the vehicle stands unproved.

9) Point No. (iii), (iv) & (v) :

Both the opposite parties unanimously affirm that the 'low pick-up' exhibited by the vehicle in question is attributed to the lapse and negligence on the part of the complainant or his crew, in perpetually and persistently maintaining the requisite level of the 'AdBlue'. Admittedly, it thus becomes imperative that the perpetual maintenance of the requisite level of AdBlue is a matter that is decisive of the flawless performance of the vehicle in question, and any omission in this regard will turn the vehicle faulty. In that case, the complainant who purchased the vehicle in question for a handsome consideration to the tune of more than 18 lakh rupees, has every right under Section 6(b) of the Consumer Protection Act, 1986 to be informed about the quality of the vehicle he purchased, with a view to protecting himself against any unfair trade practice. None of the opposite parties produced any evidence at all to prove that they had given adequate instructions to the complainant regarding the correct usage of the vehicle so as to prevent and eliminate the faulty performance of its, to be more specific, in respect of the importance and

significance of properly maintaining the appropriate level of 'AdBlue', though the opposite parties baldly claim to have done that. In the absence of any such unambiguous communication to that effect passed on to the complainant by the opposite parties, the complainant cannot be faulted for the improper maintenance of AdBlue level, if any, occurred and we are constrained to hold that the opposite parties thereby deprived the complainant of his legitimate right to be informed about the quality of the vehicle, at the time he purchased the same. Such an unpardonable withholding of relevant information which is admittedly crucial in the flawless performance of the vehicle in question is certainly deficiency in service on the part of the opposite parties which at the same time constitutes unfair trade practice on their part, as well.

As is known to all, vegetables are subject to speedy and natural decay. The complainant who runs the business of transporting vegetables might certainly have, as claimed, encountered inexplicable agony, hardship and financial loss owing to the misdeeds on the part of the opposite parties. The financial loss suffered by the complainant by way of expense for extra fuel or damage of vegetables caused by the delay in transportation etc. is self evident. The non-adherence to deadlines pertaining to transportation and delivery of vegetables, might also have caused irreparable dent in the goodwill and reputation of his business, as well. The complainant might also have unproductively spoilt several business days owing to the admitted fact that the vehicle had been repeatedly retained for repairs relating to the exhibited fault of 'low pick up'. The opposite parties have necessarily to compensate the complainant. We are of the contemplated view that the complainant is entitled to receive from the opposite parties a sum of Rs.2 lakh towards compensation for the financial loss, agony and hardship inflicted on him and a sum of Rs.10,000/- (Rupees Ten thousand only) towards costs.

In the result, the complaint is partly allowed and the opposite parties are jointly and severally directed to pay the complainant :

- a) a sum of Rs.2,00,000/- (Rupees two lakh only) towards compensation for the financial loss, agony and hardship he underwent, and
- b) a sum of Rs.10,000/- (Rupees Ten thousand only) towards cost of litigation,

both with 9% interest p.a. from the date of filing of the complaint till the date of realisation.

The opposite parties shall comply with the above direction within 30 days of receipt of a copy of this order.

Given the order dtd.30/03/23 passed by the Hon'ble High Court Of Kerala in OP (C) 608/23 directing speedy disposal of the complaint, the Registry shall ready this order on a priority basis.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 30th day of April 2024.

Sd/-
Sreeja S.
Member

Sd/-
Ram Mohan R
Member

Sd/-
C. T. Sabu
President

Appendix

Complainant's Exhibits :

Ext. A1 (SP) copy of Invoice No. VES/17-18/0152 dtd. 22/06/17 issued by the 1st opposite party in favour of the complainant, towards the sale of "1617R 4X2 5100 BS IV", for a sum of Rs.18,82,339/-.

Ext. A2 copy of the Certificate of Registration in respect of Vehicle No. KL 08BM 6034 (BHARAT BENZ 1617R BS IV).

Ext. A3 (SP) printout regarding date wise working details.

Ext. A4 a printout of the email trail in respect of the communication from the complainant to various email Ids ending with the domain "@autobahntrucking.com", the sender's email Id being indianvegssupermarket@gmail.com.

- Ext. A5 copy of complainant's lawyer notice dtd. 13/04/18 addressed to the 1st opposite party.
- Ext. A6 copy of complainant's lawyer notice dtd. 23/07/18 addressed to the 1st opposite party.
- Ext. A7 Postal Receipt dtd. 25/07/18.
- Ext. A8 Postal Acknowledgment card.
- Ext. A9 complainant's lawyer notice dtd. 23/07/18 addressed to the 2nd opposite party.
- Ext. A10 Postal Receipt.
- Ext. A11 Postal Acknowledgement card.
- Ext. A12 the 1st opposite party's reply notice dtd. 21/08/18.
- Ext. A13 the 2nd opposite party's reply notice dtd. 22/08/18.

1st Opposite Party's Exhibits :

- Ext. B1 (a) copy of the extract of the minutes of the 1st opposite party's Board Meeting held on 15/11/2023 authorising an agent to further CC 494/18 before the Commission.
- Ext. B1 (b) comprises Job Slip No. 3701 dtd. 17/07/18 issued by the 1st opposite party, satisfaction note dtd. 18/07/18 and Invoice No.JBC1012BD1801373 DTD.18/07/18 issued by the 1st opposite party
- Ext. B1(c) comprises Job Slip No.2543 dtd.14/04/18 issued by the 1st opposite party and Invoice No.JIN1012BD1800158 DTD. 14/04/2018 issued by the 1st opposite party.
- Ext. B1(d) comprises Job Slip No.4539 dtd. 04/10/18 issued by the 1st opposite party and Invoice No.JIN1012BD1802357.
- Ext. B1 (e) comprises Job slip No.23825 dtd.17/04/23 issued by the 1st opposite party.

Ext. C1 Expert Commissioner's Report

2nd Opposite Party's Exhibits :

Nil

Id/-
Member

//True copy//

Assistant Engineer