

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
HARYANA PANCHKULA**

Date of Institution:11.10.2017

Date of final hearing: 13.05.2024

Date of pronouncement: 20.05.2024

First Appeal No.1204 of 2017

IN THE MATTER OF

Mahindra & Mahindra Ltd., Mahindra Towers, GM Bhosle Marg, Worli, Mumbai-400018 through its Authorized Signatory.

.....Appellant.

Through Counsel Shri Vaibhav Narang, Advocate

Versus

1. Kuldeep Singh son of Shri Ram Kishan, resident of H.No.81, Village Shamri Sisran, Tehsil Gohana, Distt. Sonapat.

....Respondent No.1

Through counsel Ms. Neeru Sharma, Advocate

2. P.P. Automotive Pvt. Ltd. through Director/Manager/Concerned Officer, at Nirmal Motor Buildings, Meerut Road, Karnal-132001.

3. P.P. Automotive Pvt. Ltd., through Director/Manager/Concerned Officer, at 41/2, Petrol Pump, Bahalgarh Road, Sonapat.

....Respondents No.2 & 3

Service dispensed with being proforma respondents.

CORAM: S.C. Kaushik, Member.

Present:- Shri Vaibhav Narang, counsel for the appellant.

None for respondent No.1.

Service of respondents No.2 & 3 already dispensed with vide order dated 05th January, 2023.

O R D E R**S. C. KAUSHIK, MEMBER:**

Delay of 03 days in filing of the appeal is hereby condoned for the reasons stated in the application for condonation of delay.

2. Present appeal is preferred against the order dated 05.09.2017 in Consumer Complaint No.45 of 2017, passed by learned District Consumer Disputes Redressal Forum, Sonapat (now 'learned District Commission'), vide which complaint filed by the complainant was allowed and opposite parties ('OPs') were directed as under:-

"The complainant has purchased a brand new vehicle from the respondents, but he could not enjoy the same due to the defects developed therein. Thus, we hereby direct that the complainant shall pay Rs.1,00,000/- (Rs.One lac) to the respondents and then the respondents shall replace the vehicle of the complainant with new brand new vehicle within a period of 45 days from the date of passing of this order, failing which, the law will take its own recourse. With these observations, findings and directions, the present complaint stands allowed"

3. Brief facts of the complaint filed before learned District Commission are that the complainant has purchased a brand new car make Mahindra TUV Black from the OPs on 29.02.2016. It was alleged that on 02.04.2016, before the first free service, he observed race and pick up problem in the vehicle and the same was brought in the notice of the official of service center at the time of first free service and the said official told that the said problem will be set right, but after some days of the service, the problem again developed. Again on 17.05.2016, at the time of second service, he again brought the said problem but of no use. Thereafter, on 02.07.2016, the complainant against went to the service center of OPs with the same problem and at this time, it was assured that problem will not arise, but on 15.07.2016, 26.07.2016 and 04.08.2016,

complainant again went to the service center with the same problem. It was further alleged that besides this, another problem of alternator has developed and due to this, the vehicle could not start and the OPs replaced the alternator and the vehicle of the complainant remained at the service center of OPs from 19.08.2016 to 27.08.2016. Moreover, after this repair, some other problems have developed i.e. overheating of engine, coolant leakage from radiator, under body coolant leakage, engine overheating etc. and when the complainant approached the OPs with said problems, the OPs replaced the radiator and other parts, but due to this, the engine of the vehicle all of a sudden has started creating under body abnormal noise. It was further alleged that the complainant has also served the OPs with legal notice dated 03.11.2016 with the request to replace the said vehicle with new one and further to compensate him to the tune of Rs.5,00,000/-, but of no use. Thus, there was deficiency in service on the part of OPs.

4. Upon notice, OPs appeared before learned District Commission and filed their separate written versions. OP No.1 in its written version submitted therein that the vehicle of the complainant was running always successfully, however, normal wear and tear issues do occur in every machine and the same cannot be equated with manufacturing defect by any stretch of imagination. It was submitted that the complainant even alleged defect when the vehicle had gone for washing purpose only or for mandatory service visit. The vehicle was in good running condition and the odometer reading shows the same that since the date of purchase in 2/2016 to 24.03.2017, the vehicle had run 49802 Kms. which shows that the vehicle has been extensively used by the complainant. It was further submitted that the vehicle which has any manufacturing defect cannot run close to 50000 Kms. in just one year and from this fact, it was established that the vehicle was in perfect running condition and there was no manufacturing defect of any kind. It was further submitted that the complainant on 07.10.2016 had reported abnormal noise from the engine and when checked, it was found OK at part with new other vehicle. Thereafter, in order to satisfy the complainant, a road test was conducted with him for 5 Kms. and no such abnormal noise was found in the engine. There was no major defects or manufacturing defect in the vehicle as alleged by the complainant. It was further submitted that the extensive use of the vehicle itself is sufficient proof of the good condition of the vehicle and thus, there was no deficiency in service on the part of the OP No.1.

5. On the other hand, OPs No.2 & 3 in their written version submitted that all the complaints which were made by the complainant were properly attended and all the defects of the vehicle were removed. It was submitted that the complainant has made a complaint of alternator which was replaced by other Mahindra & Mahindra Service Centre and not by the OPs No.2 & 3. It was further submitted that on every visit, the complainant was satisfied with the working of OPs No.2 & 3. The complainant has not suffered any mental agony or harassment at the hands of OPs No.2 & 3. Finally, it was submitted that there was no deficiency in service on the part of OPs No.2 & 3 and has prayed for the dismissal of the complaint.

6. After hearing the parties, learned District Commission accepted the complaint of complainant and issued directions as mentioned above in 2nd para (Supra).

7. Aggrieved from the impugned order passed by learned District Commission, appellant-OP no.1 has preferred the present appeal for setting aside the impugned order by accepting the present appeal.

8. None has put in appearance on behalf of respondent No.1 since last eleven dates of hearing. Perusal of record reveals that on 07th August, 2019 one proxy has appeared for Ms. Neeru Sharma, Advocate for respondent No.1, thereafter nobody has turned up on behalf of respondent No.1. So, vide separate order of dated 13.05.2024, respondent No.1 was proceeded against ex-parte.

9. The arguments have been advanced by Mr. Vaibhav Narang, learned counsel for the appellant. With his kind assistance, contents of the appeal has also been properly perused and examined.

10. As per the version of learned counsel for appellant-OP No.1, the vehicle of the respondent-complainant was running always successfully, however, normal wear and tear issues do occur in every machine and the same cannot be equated with manufacturing defect by any stretch of imagination. He further argued that the respondent-complainant even alleged defect when the vehicle had gone for washing purpose only or for mandatory service visit. The vehicle in question was in good running condition and the odometer reading shows the same that since the date of purchase in 2/2016 to 24.03.2017, the vehicle had run 49802 Kms. which shows that the vehicle has been extensively used by the complainant. He further argued that the vehicle which has any manufacturing defect cannot run close to 50000 Kms. in just one year and from this

fact, it is established that the vehicle was in perfect running condition and there was no manufacturing defect of any kind. He further argued that the extensive use of the vehicle itself is sufficient proof of the good condition of the vehicle and thus, there was no deficiency in service on the part of present appellant and further prayed for setting aside the impugned order by acceptance of present appeal.

11. It is an admitted fact that on 29.02.2016, present respondent-complainant had purchased a new car make Mahindra TUV Black and present appellant-OP No.1 is the manufacturer of said car. It is also an admitted fact that the problem regarding race and pick up in the vehicle was brought into the notice of the official of service center at the time of first free service. Thereafter, again on 17.05.2016, at the time of second service, same problem was brought into the notice of the officials of service center. It is also an admitted fact that the respondent-complainant visited the service center of appellant 02.07.2016, 15.07.2016, 26.07.2016 and 04.08.2016, with the same problem in his car in question. It is also an admitted fact that the vehicle in question of respondent No-complainant remained at the service center from 19.08.2016 to 27.08.2016 due to another problem of alternator and due to this, the vehicle could not start.

12. From the perusal of records, it is proved that after this repair, some other problems have developed i.e. overheating of engine, coolant leakage from radiator, under body coolant leakage, engine overheating etc. and when the respondent-complainant approached the OPs with said problems, the OPs replaced the radiator and other parts, but due to this, the engine of the vehicle all of a sudden started creating under body abnormal noise and this problem was reported by respondent No.1-complainant on 07.10.2016. On the other hand, as per appellant-OP No.1, abnormal noise from the engine was checked and it was found OK at par with any other new vehicle.

13. After going through the contentions of learned counsel for appellant as well as perusal of entire record, it is observed that the contention of learned counsel for appellant that there is no manufacturing defect in the vehicle in question is not tenable in the eyes of law because the respondent No.1-complainant had purchased a brand new vehicle and just before its free service it creating problem regarding race and pick up. Thereafter, he visited the service center of vehicle in question several times with the same problem and this fact is admitted as well. Moreover, the vehicle in question remained at the service center for a long period i.e. 19.08.2016 to 27.08.2016 and the vehicle in question was last repaired on 07.10.2016, but the problem in vehicle in question increased i.e. "started creating under body abnormal noise". In considered view of this Commission, it is observed that nobody visit time and again at the service center along with his/her brand new vehicle without any problem in its vehicle. In the present case in hand, respondent No.1-complainant had purchased a brand new vehicle which was manufactured by present appellant, but he could not enjoy the same due to defects in vehicle in question. The learned District Commission rightly directed the present respondent No.1-complainant to pay Rs.1,00,000/- to the OPs because the vehicle in question has run approximately 50000Kms. and also directed the OPs to replace the vehicle in question with a brand new vehicle.

14. In view of the above observations and discussion, learned District Commission rightly allowed the complaint of the complainant. The impugned order passed by learned District Commission is well reasoned, based on facts and as per law, and therefore, there is no need to interfere with it. In view of this, present appeal is without merit and thus, stands dismissed.

15. Statutory amount of Rs.25,000/- deposited at the time of present appeal be refunded to the appellant against proper receipt, identification and as per rules after expiry of the period for filing appeal/revision, if any.

16. A copy of this order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 2019. This order be uploaded forthwith on the website of the Commission for the perusal of the parties.

17. Application(s), pending, if any, stands disposed off in terms of the aforesaid order.

18. File be consigned to record room alongwith a copy of this order.

Pronounced on 20th May, 2024

S.C. Kaushik
Member
Add. Bench

R.K