

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

Date of Institution: 06.12.2019
Date of final hearing: 11.06.2024
Date of Pronouncement: 22.07.2024

First Appeal No.1060 of 2019

1. Hero MotoCorp Ltd., Plot No.F-126, Katwaria Sarai, Kutub Industrial Area, New Delhi 110016 through Managing Director.
2. Jai Automobiles in front of Small Zoo, Vidya Ngara, Meham Road, Bhiwani.Appellants

Versus

Rajender Singh S/o Ishwar Singh H.No. 2511, Near Shiv Mandir
Kharak Kalan, Tehsil & District Bhiwani.Respondent

CORAM: Mr. Naresh Katyal, Judicial Member
Mrs. Manjula Sharma, Member

Argued by:- Mr.Raj Kumar Narang, counsel for the appellant.
Mr.Rajender Singh respondent in person.

ORDER

NARESH KATYAL, JUDICIAL MEMBER:-

Delay of 26 days in filing of this appeal is condoned for reasons stated in application for condonation of delay.

2. Appellant herein was proceeded against *ex parte* in proceedings of learned District Consumer Commission-Bhiwani. It has now invited challenge in this Appeal No.1060 of 2019 to legality of order dated 24.09.2019 passed by District Consumer Disputes Redressal Forum-Bhiwani (*In short "District Consumer Commission"*)

in Consumer Complaint No.169 of 2018, vide which complainant's complaint has been allowed, *ex parte*.

3. **Factual matrix:** Complainant purchased Motorcycle (Splendor) bearing chassis No.MBLHAR086JHB21874, Engine NO.HA10AGJHBB3787 and registration No. HR-16-U-0158 from Jai Automobiles on 17.03.2018. Motorcycle was given problem from first day of its purchase and he brought it to Jai Automobiles on 11.04.2018. After doing minor repair, Jai Automobiles charged Rs.355/- from him. Motorcycle again went out of order on 07.05.2018 and it was brought at Jai Automobiles, which replaced its wheel by charging Rs.2531/- from him. It again went out of order on 25.05.2018 and was brought to Jai Automobiles by loading it in tempo. He was asked to come after two days. On 31.05.2018, motorcycle was handed over to complainant after repair and Rs.271/- was charged from him. Complainant brought it at his home. After few days, it again went out of order and he again loaded it in tempo and brought it at Jai Automobiles on 04.09.2018. He was told to come after five days. On 18.09.2018, his motorcycle was repaired and Rs.2038/- was charged from him against bill of Rs.437/- so given to him. Complainant was not satisfied and OPs refused to own their responsibility. After five-six days, motor cycle again went out of order and it is lying in same condition. Motorcycle is having *inherent manufacturing defect* as per saying of Jai Automobiles. It is pleaded that guarantee of two years qua motor cycle was given. By pleading

deficiency in service of OPs-appellants and unfair trade practice on their part, complaint has been filed.

4. In proceedings of complaint; OPs-appellants were proceeded against *ex parte* vide order dated 08.04.2019 of District Consumer Commission-Bhiwani. Complainant led *ex parte* evidence, oral as well as documentary. On analysing it; learned District Consumer Commission-Bhiwani vide order dated 24.09.2019 has allowed complaint, *ex parte*. It has directed OPs-appellants to replace old motor cycle of complainant, with new one. Simultaneously, complainant has been directed to hand over old motor cycle, with its requisite papers (registration certificate, insurance etc.) to OPs-Appellants. Complainant has also been awarded compensation of Rs.5000/- on account of harassment and litigation expenses.

5. Feeling dissatisfied; unfazed and unsuccessful OPs/Appellants have filed instant appeal.

6. We have heard learned counsel for appellants, as well as respondent- complainant appearing in person at length and also examined record with their able assistance.

7. Learned counsel for OPs-appellants, while urging for acceptance of this appeal, has contended that; impugned order dated 24.09.2019 passed by Learned District Consumer Commission-Bhiwani, though passed *ex parte* against appellants, yet same is illegal. It is contended in this regard that sole case of complainant is based upon his pleaded allegation that vehicle in question purchased by him carry *inherent manufacturing defect*. To stimulate his above

quality allegation, complainant has alleged that he had been taking his vehicle at workshop of OP No.1, time and again, but its performance was not satisfactory. It is urged that merely because Rings, Gasket Cover, Piston, Cylinder of vehicle were replaced, as it is evident from documents Annexure C-3 to Annexure C-6, yet it will not lead to conclude that vehicle had *inherent manufacturing defect*. Similarly, as per contention, even if vehicle underwent service for good number of times, still it will not legally mean to observe that it has *inherent manufacturing defect*.

8. Per Contra: Complainant-respondent-Rajender Singh while appearing in person on 11.06.2024 has vehemently contended that impugned order dated 24.09.2019 does not warrant any interference in this appeal. It is the outcome of proper appreciation of evidence brought on record by him before learned District Consumer Commission, Bhiwani, which as per contention remained un-rebutted, unchallenged and unimpeached as OPs-appellants has refused to contest the complaint and were proceeding against *ex parte*.

9. Complainant has tried to set up a case that motorcycle (splendor) purchased by him on 17.03.2018 was having inherent manufacturing defect, as its performance was unsatisfactory. Repeatedly, he had been taking motorcycle at workshop of Jai Automobiles (OP No.1) and only minor services had been done on it by said dealer and besides replacement of items/articles like Rings, Gasket Cover, Piston, Cylinder on 07.05.2018, 31.05.2018, 18.09.2018, its performance did not improve. Palpably, complainant

means to say that vehicle in question was not road-worthy. May be, vehicle in question underwent repairs for some occasion and its parts were replaced yet, complainant's contention centered on inherent manufacturing defect in vehicle will not hold any ground to sub-serve his cause, meaningfully. Reasons in this regard are obvious. Firstly, in legal parlance, in order to prove inherent manufacturing defect in vehicle in question, the "*burden of proof*" lay upon complainant alone to bring on record, positive evidence shape of some expert opinion, which is severely lacking in this case. Palpably, learned District Consumer Commission-Bhiwani has just proceeded on assumption and swayed away by the fact that despite replacement of articles in vehicle and service done on it at short intervals, for as many as three times, after its purchase; the vehicle in question had not given satisfactory performance to complainant and thus there is an inherent manufacturing defect in it. This notion of learned District Consumer Commission-Bhiwani is legally incorrect and there is a fallacy committed by learned District Consumer Commission-Bhiwani. Law with regard to proof of inherent manufacturing defect in any vehicle, is no more *res-integra*. Even if, vehicle had been taken at workshop for good number of times and same got repaired, then this circumstance, *ipso-facto* does not justify presence of any inherent manufacturing defect. It has been held as such by Hon'ble National Consumer Commission in case titled as ***Classic Automobiles Vs. Lila Nand Mishra & another 1 (2010) CPJ 235 (NC)***- that: "merely because vehicle was taken for repair repeatedly, no manufacturing defect can

be presumed in the absence of expert evidence.” Reliance can also be placed on judgment of Hon’ble National Consumer Commission in case titled as **TATA Motors Ltd. Vs. Deepak Goyal and others RP No. 2309 of 2008 decided on 30.01.2015**. In case titled as **Sushila Automobiles Pvt. Ltd. Vs. Dr. Birendra Narain Prasad & Ors., judgment dated 07.05.2010 (2010) CPJ 130**, in which judgment of **Surender Kumar Jain Vs. RC Bhargava and others reported in III (2006) CPJ 382** was referred; Hon’ble National Consumer Commission has observed that even if vehicle has been taken to workshop for 11 times for removing minor defects it cannot be said to be manufacturing defect.

10. Inherent manufacturing defect is something more than ordinary defect. As already observed above; onus lay upon complainant alone to prove inherent manufacturing defect and report of expert would necessarily provide requisite input in that regard. To establish claim for total replacement by a new vehicle; complainant has to prove by cogent, credible and adequate evidence supported by opinion of expert like automobile/mechanical engineer that vehicle suffered from inherent manufacturing defect. Unless this onus is satisfactorily discharged by complainant; the liability of manufacturer or of dealer would be limited to removal of defect and/or replacement of parts. Hon’ble Apex Court in case of **Maruti Udyog Ltd. Vs. Sushil Kumar Gabgotra and Anr. (2006) 4 SCC 644** has held that defects in various part of car are established direction for replacement of car would not be justified. Hon’ble Apex Court has observed that State

Commission has exceeded in jurisdiction in ordering replacement by a new car. In the case in hand, as observed above, no expert report/evidence, worth the name has been placed and proved on record by complainant in order to stimulate his primary claim of inherent manufacturing defect in vehicle in question. In wake of above discussion, contention of complainant's that vehicle in question had an inherent manufacturing defect stood traumatized and repelled.

11. Consequently, this Commission is of firm opinion that claim of complainant regarding replacement of new motor cycle in place of old motor cycle does not carry any credence and same is hereby rejected. In terms of above it is held that observation and direction of learned District Consumer Commission-Bhiwani in impugned order dated 24.09.2019 to replace motor cycle of complainant with new one, is illegal and perverse and same is hereby set aside. Complainant's complaint with regard to above claim is declined and he is accordingly non-suited.

12. So far as compensation of Rs.5000/- awarded to complainant through impugned order dated 24.09.2019 is concerned; this Commission is not inclined to accept contention of learned counsel for appellant that this observation be also overturned. It is well proved on record that complainant had been knocking the doors of Jai Automobiles i.e. OP No.1 time and again at regular short intervals after purchase of motorcycle, by taking it to agency with complaint of its unsatisfactory performance. It might not be road-worthy, which fact admittedly had led OP No.1 to replace some of its parts. The

harassment and agony suffered by complainant is *ex facie* visible.

This being so, the compensation of Rs.5000/- awarded to complainant through impugned order dated 24.09.2019 is hereby held as "*just, appropriate and reasonable compensation*". Impugned order dated 24.09.2019 is accordingly upheld to above extent i.e. with regard to award of compensation of Rs.5000/- to complainant.

13. As a sequel to above discussions, as per para 11 and 12 of this order; this appeal is partly allowed. Impugned order dated 24.09.2019 is set aside in so far as direction issued to OPs to replace the old motorcycle of complainant with new one. Impugned order dated 24.09.2019 is maintained affirm and upheld, so far as award of compensation of Rs.5000/- to complainant is concerned.

14. Statutory amount of Rs.25,000/- deposited by appellants at the time of filing of this appeal is now ordered to be refunded to it (appellants-OPs) against proper receipt, identification and verification as per rules and regulations. This Commission vide order dated 19.12.2019 has directed appellants to deposit Rs.40,000/- before learned District Consumer Forum. Appellants, in compliance of that order had deposited Rs.40,000/- through cheque No.339886 dated 22.01.2020 in the name of President, District Consumer Disputes Redressal Forum, Bhiwani. This cheque amount, has further been ordered to be deposited in account No.65003439167 of State Bank of India, Bhiwani. Order dated 13.02.2020 of learned District Commission-Bhiwani is specific on above facts. Now, since appeal of appellants has been partly allowed, therefore District Consumer

Commission-Bhiwani is directed to release the amount of Rs.40,000/- with up to date interest thereon to appellants/OPs against proper receipt, identification and verification, as per rules.

15. Application(s) pending, if any stand disposed of in terms of the aforesaid judgment.

16. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986/2019. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

17. File be consigned to record room.

Date of pronouncement: 22nd July, 2024

**Manjula Sharma
Member
Addl. Bench-I**

**Naresh Katyal
Judicial Member
Addl. Bench-I**