

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/22/50
(Date of Filing : 18 Jan 2022)**

1. NIDHI JAIN

KAVITHA APARTMENTS , DR PATHY LANE,
VEEKSHNAM ROAD, ERNAKULAM

.....Complainant(s)

Versus

1. HONDA MOTORCYCLE & SCOOTER INDIA PVT LTD
49-/50 GOLF COURSE EXTENSION ROAD, GURGAON

.....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 : 26 Jul 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM

Dated this the 26th day of July, 2024.

Filed On: 18/01/2022

PRESENT

Shri.D.B.Binu President

Shri. V. Ramachandran Member

Smt. Sreevidhia T.N. Member

C.C. No. 50/2022

COMPLAINANT

Nidhi Jain, D/o Navarathankumar, G-2, Kavitha Apartments, Dr. Pathy Lane, Veekshanam Road, Ernakulam-682018.

(Rep. by Adv. Tom Joseph, court Road, Muvattupuzha)

V/s

OPPOSITE PARTIES

1. M/s Honda Motorcycle and Scooter India Pvt. Ltd. Commercial Complex-11, Sector 49-50, Golf Course Extension Road, Gurgaon-122018, Represented by its Managing Director

(Rep. by Adv. John Prakash Bavakkat, Chakkalayil Chambers, North Block, Opp. Old Lulu Mymoon Cinemas, Chittoor Road, Kochi 18)

2. M/s Muthoot Motors, 35/177A, Near Palarivattom Metro Station, Ernakulam-Aluva Road, Palarivattom, Kochi-682025 Represented by its Managing Partner

FINAL ORDER

D.B. Binu, President.

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

The complaint was filed under Section 35 of the Consumer Protection Act, 2019. The complainant purchased a Honda Activa 4G scooter (Engine No. JF50ET9278254, Frame No. ME4JF50CCJT278222) from the second opposite party on 12.3.2018 for Rs. 67,490/- with a year's warranty. The scooter exhibited defects from the beginning, including abnormal sounds. It was repeatedly entrusted for repairs due to starting troubles and one-side pulling complaints on 25.7.2019 (11347 km), 7.9.2019 (12307 km), 31.10.2019 (13426 km), and 20.11.2019 (13437 km). Major parts such as the crankshaft, face drive, and plater AMP were replaced.

Due to COVID-19 lockdowns, the scooter remained idle. After the lockdowns, the earlier issues resurfaced, but the second opposite party refused warranty coverage, claiming the scooter was repaired in local workshops. The complainant sent a complaint on 4.10.2021, but the second opposite party responded on 22.10.2021, denying service under warranty. On 9.3.2021, the scooter was again taken for repairs for engine noise and speedometer problems, but the second opposite party refused to repair under warranty.

The complainant was forced to repair the scooter at other workshops. Despite multiple repairs within the warranty period, the defects persisted. The recurring issues suggest manufacturing defects, and the technicians' inability to rectify them indicates the defects are beyond normal repairs. The defective scooter defeated the purpose of the purchase, leading to severe hardships, mental agony, and financial loss for the complainant. The opposite parties' actions constitute unfair trade practices and deficiency in service.

The complainant seeks a refund of Rs. 67,740/- with 12% p.a. interest from the purchase date until realization and Rs. 20,000/- compensation for hardships, financial loss, and mental agony. The complainant prays for the commission to grant the requested relief and the cost of the proceedings.

2. Notice:

The Commission sent the notice to the Opposite Parties. The Opposite Parties have filed their versions in response.

3. Version of the Opposite Parties:

The opposite parties deny most of the allegations made by the complainant, asserting that they are global leaders in two-wheeler manufacturing with a reputation for reliable engines. They

emphasize that the warranty terms, detailed in the owner's manual, were communicated to the complainant at the time of purchase, and the second opposite party adheres strictly to service mandates to maintain quality.

The opposite parties acknowledge the timeline of services mentioned in the complaint but argue that all services were provided satisfactorily. They assert that the vehicle was serviced as per the recommended schedule to ensure the engine's longevity. Specifically, the scooter was serviced on 14.04.2018, 07.07.2018, 19.11.2018, and 12.03.2019, all within the warranty period and to the complainant's satisfaction.

They further argue that the complainant failed to adhere to the warranty conditions, which stipulate that services must be performed by authorized dealers. The opposite parties claim that the complainant's usage of the vehicle for at least 7,000 km without any service voids the warranty. They note that the service centre was only closed for 21 days due to the COVID-19 lockdown, and services were available otherwise. They contend that the complainant's failure to service the vehicle for over a year and a half cannot be excused by the lockdown.

The opposite parties also highlight that the speedometer was non-functional, making it impossible to ascertain the exact usage of the vehicle. They deny any manufacturing defects and assert that any reported issues were rectified. The second opposite party claims it did not refuse service but indicated that repairs would be chargeable due to the warranty conditions being violated.

In summary, the opposite parties refute the claims of deficiency in service or unfair trade practices and deny causing any hardship, mental agony, or financial loss to the complainant. They maintain that the complainant is not entitled to compensation or a refund as claimed.

4. Evidence:

The complainant submitted a proof affidavit along with seven documents. The documents in the complaint are marked as **Exhibits A1 to A4**. The complainant was examined as PW1.

- Exhibit A1: Copy of the receipts and tax invoices dated 12.3.2018.
- Exhibit A2: Copy of the vehicle service history of the scooter.
- Exhibit A3: Copy of the complaint dated 4.10.2021 sent to the opposite parties.
- Exhibit A4: Copy of the reply dated 22.10.2021 received from the second opposite party.

The opposite parties submitted one document:

- Owner's Manual

5. Points for Analysis:

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 any relief from the side of the opposite party? iv) Costs of the proceedings if any?

5. Argument Note by Sri. Tom Joseph, Learned Counsel for the Complainant:

The complaint pertains to a recurring defect in a Honda Activa 4G scooter (Engine No. JF50ET9278254, Frame No. ME4JF50CCJT278222) purchased from the second opposite party on 12.03.2018 for Rs. 67,490/-. The scooter, which came with a one-year warranty, started showing various defects from the beginning, including abnormal sounds. The scooter was repeatedly taken for repairs for issues such as starting trouble and abnormal sounds on multiple occasions (25.07.2019, 07.09.2019, 31.10.2019, 20.11.2019). Major parts like the crankshaft, face drive, and plater AMP were replaced as documented in the vehicle repair history (Exhibit A2).

The complainant had to keep the scooter idle during COVID-19 lockdowns. After the lockdowns, the initial problems reappeared, but the second opposite party refused warranty coverage, alleging repairs were done in local workshops. The complainant sent a complaint on 04.10.2021 (Exhibit A3), but received a reply on 21.10.2021 (Exhibit A4) reiterating the refusal to provide warranty service.

The complainant argues that despite multiple repairs within the warranty period, the defects persisted, indicating a manufacturing defect. The second opposite party's technicians failed to rectify the issues, proving the defect is beyond normal repairs. The National Commission's dictum in a similar case (TATA ENGINEERING AND LOCOMOTIVE CO. Vs Subhash Ahuja) is cited in support.

The complainant, a 25-year-old woman who bought the scooter for daily use, has been severely impacted as the scooter remains unusable. The persistent defects defeated the purpose of the purchase. The complainant argues that the opposite parties are liable to provide warranty coverage for pre-existing complaints and compensate for unfair trade practices and deficiency in service.

The complainant seeks a refund of Rs. 67,490/- with 12% interest p.a. from the purchase date, and Rs. 20,000/- in compensation for hardships, financial loss, and mental agony. The complainant requests the commission to grant the relief sought, along with the cost of the proceedings.

In the case **Tata Engineering and Locomotive Co. Ltd. V. Subhash Ahuja & Anr., (2013) CPJ 743 (NC)**, the **Hon'ble National Consumer Disputes Redressal Commission** (NCDRC) addressed a manufacturing defect in a motor vehicle. The complainant faced significant issues with various parts of the vehicle, leading to mental agony and harassment. The vehicle's engine was replaced, and it required 36 visits to the workshop during the warranty period. The appellant argued there was no manufacturing defect and that the engine replacement was a goodwill gesture post-warranty. This argument was rejected by the Commission, which noted that no manufacturer would replace an engine if it could be repaired. The Commission upheld the State Commission's decision, citing the principle of "**res ipsa loquitur**" (the thing speaks for itself), and awarded Rs. 2,50,000 in compensation. The appeal was dismissed.

The case cited several precedents, including:

1. **Tata Motors Ltd. v. Shri Kushal Singh Thakur & Ors.**, Revision Petition No. 1153 of 2005, decided on 21.8.2009, where the principle of addressing manufacturing defects was

reinforced.

2. **Classic Automobiles v. Lila Nand Mishra & Anr.**, 1 (2010) CPJ 235 (NC), which dealt with similar issues of vehicle defects and compensation.
3. **Maruti Udyog Ltd. v. Susheel Kumar Gabgotra & Anr.**, (2006) 4 SCC 644, where the Hon'ble Supreme Court of India upheld the consumer's rights against manufacturing defects.

The NCDRC emphasized that technical expert opinions were unnecessary in this case due to the obvious nature of the defects. The complainant was considered a consumer under the Consumer Protection Act, 1986, as the vehicle was purchased for personal use, not for commercial purposes or profit generation. The ruling underscored the manufacturer's responsibility to provide defect-free products and adequate service under warranty.

We have meticulously considered the detailed submissions of both parties, as well as thoroughly reviewed the entire record of evidence, including the argument notes.

6. Analysis and Legal Reasoning:

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

i) Maintainability of the Complaint:

In the present case, 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. The complainant, having purchased the scooter from the opposite party for a consideration (**Exhibit A1**), qualifies as a consumer under the Act. Therefore, the complaint is maintainable.

ii) Deficiency in Service and Unfair Trade Practice:

The complainant has provided substantial evidence of the persistent defects in the scooter, supported by the service history (**Exhibit A2**) showing multiple repairs for the same issues. Despite these repairs, the defects recurred, indicating that the problem was not resolved. The refusal to honour the warranty and the misleading statements regarding the nature of repairs (as demonstrated by the discrepancy between the opposite parties' claims and the service history) constitute a deficiency in service and unfair trade practice.

According to the argument of the complainant, in Para 4, Line 14 of the written version filed by the opposite parties, it is falsely mentioned that only the spark plug was replaced on 25.07.2019. However, a look at **Exhibit A2** shows that the vehicle was given for repair with complaints of starting trouble, one-side pulling, engine oil changes, brake adjustment (front and rear), and wheel adjustment. These services were provided under paid service, and charges were collected on 13 counts, including "brake overhauling."

The opposite parties, with an intention to mislead, omitted to mention the services and major repairs done after 25.07.2019, as indicated in **Exhibit A2**. The vehicle was entrusted three times for repair after 25.07.2019 in very short intervals with the same complaint of starting trouble. On 07.09.2019, the vehicle was given with the complaint of "starting trouble," and charges were collected for "brake overhauling." Notably, on 25.07.2019, just 43 days earlier, charges had

already been collected for "brake overhauling," indicating a possible manufacturing defect in the vehicle.

Exhibit A2 also shows that on 31.10.2019, 53 days later, the vehicle was given again with the same complaint of "starting trouble," and charges were collected for repair. On 20.11.2019, 19 days later, the vehicle was once more given with the same complaint. Major repairs were performed, including opening the engine and replacing the complete crankshaft, face drive, and plater AMP.

If there was no manufacturing defect in this engine, it is perplexing why the engine had to be opened and repaired multiple times despite timely services and repeated repairs. The repeated major repairs and collected charges for the same issues suggest that the defect was inherent and beyond normal repairs. This persistent problem indicates a significant manufacturing defect in the vehicle.

The complainant was examined as PW1 and provided the following deposition:

“(Q) On 25/7/2019 the 2nd op had found complaint in spark plug and return the scooter to your satisfaction after replacing the spark plug (Q). Yes, but the defect in the scooter kept recurring again and again in spite of all the repairs conducted by them (A)

(Q) Are you produce any document for the above work? (Q)

Yes, we produced the service history (A)

(Q) Have you produced and their service history?

Yes, I had produced (A) “

On being questioned about the service on 25/07/2019, the complainant confirmed that the second opposite party found a defect in the spark plug and returned the scooter after replacing it, apparently to the complainant's satisfaction. However, the complainant asserted that despite all the repairs conducted, the defect in the scooter kept recurring. When asked if any documents were produced regarding the repairs, the complainant affirmed that they had provided the service history as evidence. This service history (**Exhibit A2**) was submitted to substantiate the claim that the recurring issues persisted despite the multiple repair attempts by the opposite party. This indicates the ongoing nature of the problem and supports the complainant's claim of a significant manufacturing defect in the scooter.

The precedent set in **Tata Engineering and Locomotive Co. Ltd. v. Subhash Ahuja & Anr., (2013) CPJ 743 (NC)**, supports the complainant's case. In that case, the NCDRC held that persistent issues and multiple repair attempts without resolution indicated a manufacturing defect. The principle of "res ipsa loquitur" applied, where the defect speaks for itself.

iii) Entitlement to Relief:

Given the evidence of persistent defects and the opposite parties' failure to rectify them, the complainant is entitled to relief. The complainant has sought a refund of the purchase price with

interest and compensation for the hardships endured.

iv) Costs of the Proceedings:

Considering the circumstances and the evidence presented, the commission finds it appropriate to award the complainant the costs of the proceedings.

The commission recognizes the considerable distress and inconvenience that the complainant, a young woman of 25 years, has endured due to the persistent defects in her scooter. Despite her diligent efforts to seek repairs and resolution, she has faced recurring issues that have disrupted her daily life and caused significant mental and financial strain. The frustration of investing in a vehicle meant for daily use, only to be repeatedly let down by its performance, is palpable. It is essential that consumers are provided with reliable products and fair service, and in this case, the complainant's perseverance in seeking justice highlights the importance of accountability and consumer rights.

We determine that issue numbers **(I) to (IV)** are resolved in the complainant favour due to the significant service deficiency and the unfair trade practices on the part of the opposite parties. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite parties.

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

Hence, the prayer is partly allowed as follows:

- I. The opposite parties shall refund the purchase price of the scooter ₹67,740/- (Rupees Sixty-Seven Thousand Seven Hundred Forty Only) to the complainant as evidenced by Exhibit A1 invoices.
- II. The opposite parties shall pay ₹15,000 (Rupees Fifteen Thousand Only) as compensation for monetary loss, mental agony, and hardship suffered by the complainant due to the supply of the defective scooter. This amount is awarded for the deficiency in service and unfair trade practices, as well as for the mental agony and physical hardships endured by the complainant.
- III. The opposite parties shall also pay the complainant ₹10,000 (Rupees Ten Thousand Only) towards the cost of the proceedings.

The opposite parties are jointly and severally liable for the fulfilment of the above orders, which must be executed within 45 days from the date of receiving this order. Failure to comply with the payment orders under points I and II will result in interest at the rate of 9% per annum from the date of filing the complaint (18.01.2022) until the date of full payment realization.

Pronounced in the open Commission on this the 26th day of July, 2024

Sd/-

D.B.Binu, President

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

Assistant Registrar

Appendix

Complainant's Evidence

- Exhibit A1: Copy of the receipts and tax invoices dated 12.3.2018.
- Exhibit A2: Copy of the vehicle service history of the scooter.
- Exhibit A3: Copy of the complaint dated 4.10.2021 sent to the opposite parties.
- Exhibit A4: Copy of the reply dated 22.10.2021 received from the second opposite party.

Opposite party's Exhibits

Nil

Deposition

PW1: Nidhi Jain

Despatch date:

By hand: By post

kp/

CC No. 50/2022

Order Date: 26/07/2024

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

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

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

