

**BEFORE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, BILASPUR, CAMP AT GHUMARWIN (H.P.)**

Complaint No.: 105/2021.
Date of Institution: 24.11.2021.
Decided on : 18.06.2024.

Shri Ankush Sharma son of Shri Ramesh Chand,
R/O VPO Barota, Tehsil Ghumarwin,
District Bilaspur, HP.

.....Complainant.

Versus

1. General Manager, Maruti Suzuki India Limited,
Plot No.1, Nelson Mandela Road, Vasant Kunj,
New Delhi-110071.
2. Manager, Competent Automobiles Company Ltd.,
Gutkar, District Mandi, HP-175021.
3. Manager, Competent Automobiles Co. Ltd.,
Village Tikkar, PO Didwin, NH-88, District
Hamirpur, HP-177401

.....Opposite parties.

**Complaint under Section 35 of the
Consumer Protection Act, 2019.**

Coram:

Sh.Purender Vaidya, President.
Ms. Manjula, Member.

For the complainant: Shri S.B.Nalin, Adv.
For the opposite party
No.1 : Already Ex-parte.
For the opposite parties
No.2 & 3 : Shri V.K.Handa, Adv.

ORDER:

This complaint under Section 12 of the Consumer Protection Act, 1986 has been filed by one Shri Ankush Sharma (hereinafter referred to as the complainant) against the opposite parties stating that he is owner of car bearing registration No.HP-01B-1259 and it was purchased from opposite party No.3 in February, 2020. The complainant also purchased extended warranty from opposite party No.3 after paying the amount of ₹9805.80/- and it was valid w.e.f.

28.02.2020 to 27.02.2025 or up-to one lakh kilometers, whichever is earlier. On 28.06.2021 some defects occurred in the vehicle of the complainant. So, he brought the same to the service station of opposite party No.2 on 29.06.2021. The opposite party No.2 checked the car and sent the checking report to the head office for approval. The opposite party No.2 told that the defect would be removed without charging anything as the defect occurred within the warranty period, but after 15 days, the opposite party No.2 started demanding repair charges from the complainant. Initially, the opposite party No.2 sent the estimate of ₹37,108.80/- and thereafter, again sent another estimate of ₹38,995.90/-. On 30.07.2021 the opposite party sent the estimated cost of repair of ₹44,314.10/-. Thereafter, so many mails were issued to the complainant by the opposite parties and the repair amount was shown to the tune of ₹2,19,783/- when the complainant contacted the opposite parties then he was told that 50% rebate on the aforesaid cost would be given. The complainant resisted the aforesaid estimate as the car was within the warranty period, but the complainant was forced to make the advance payment of ₹60,000/-. After receiving the aforesaid amount, the opposite party No.2 completed the repair and returned ₹365/- to the complainant. Thereby, the opposite party No.2 charged a sum of ₹59,635/- from the complainant. So, the complainant alleged deficiency in service as well as unfair trade practice on the part of the opposite parties. Consequently, the present complaint has been filed with the prayer that opposite parties be directed to pay the amount of ₹59,635/- to the complainant. The complainant also prayed for compensation to the tune of ₹3,00,000/- for harassment and mental agony and litigation cost to the tune of ₹20,000/-.

2. The opposite party No.1 was served properly, but did not put in appearance. Hence, it (OP No.1) was proceeded against ex-parte.

3. The opposite parties No.2 & 3 contested the complaint by filing a reply, wherein, preliminary objections as to maintainability, cause of action, complainant not a consumer, jurisdiction, locus-standi, no deficiency in service and false and frivolous nature of complaint

were raised. On merits, it is admitted that the complainant had purchased the extended warranty for his car, which was issued on behalf of Maruti Suzuki India Limited by the opposite party No.3. It is further stated that the complainant brought his car for repair on 28.06.2021 to the workshop of opposite party No.2 and he was told that after proper checking he would be apprised accordingly. On checking, it was found the engine of the car had seized. So, the checking report was sent to Maruti Suzuki India Limited for proper determination of cause of defect. Subsequently, it was confirmed that the defect was due to hydrostatic lock of engine, which is not a manufacturing defect. So, the said defect is not covered under the warranty. However, as a gesture of goodwill or the complainant being a regular customer 50% of repair work was offered to him to be charged by the opposite party. This offer was not accepted by the complainant. The estimate of the repair was to the tune of ₹59,635/-, which was duly charged from the complainant. Since the complainant had paid the amount of ₹60,000/- to the opposite party No.2, so, the remaining amount of ₹365/- was returned to him. Hence, there was no deficiency in service on the part of the opposite parties No.2 & 3. As a result, the opposite parties No.2 & 3 prayed for dismissal of the complaint.

4. The complainant filed rejoinder to the reply filed by the opposite parties No.2 & 3, wherein he denied the preliminary objections taken by the opposite parties No.2 & 3 and further reasserted the averments already made in the complaint.

5. Both the parties have led evidence in support of their contentions.

6. We have heard learned counsel for the parties and have gone through the record of the case carefully.

7. After due consideration, we are of the considered opinion that there is no deficiency in service on the part of the opposite parties as alleged by the complainant, for the reasons to be recorded hereinafter.

8. The complainant Shri Ankush Sharma has filed his affidavit in support of his plea, wherein, he has deposed all the facts as stated in the complaint. He has also filed on record the documents including the terms and conditions of the warranty, copies of correspondence between the parties, legal notice etc. On the other hand, the opposite parties No.2 & 3 also filed on record some documents i.e. correspondence between the parties.

9. The undisputed facts are that the car of the complainant was sent to opposite party No.2 for repair. It is also undisputed fact that the complainant has purchased the extended warranty from the opposite party No.3 in respect of his car, which was valid upto 27.02.2025. It is also undisputed fact that during the currency of aforesaid extended warranty some defects occurred in the car of the complainant.

10. The complainant neither in his complaint nor in his affidavit has specifically mentioned that what was the defect in his car. In para-5 of the complaint, he has only stated that there occurred some defects in his car and the car was brought to the opposite party No.2 on the same day by recovery van. Since the car was brought to the opposite party No.2 with the help of recovery van, so, this admission of the complainant is sufficient to establish that the car was not in running condition. The complainant ought to have specifically stated in the complaint what defect exactly had occurred in the car due to which the car was unable to ply or it was not in running condition.

11. The opposite parties No.2 & 3 in reply has disclosed that on checking it was found that the engine of the car had seized due to hydrostatic lock and it is the plea of opposite parties No.2 & 3 that the aforesaid defect is not a manufacturing defect. So, the complainant was not entitled to get his car repaired free of cost. The aforesaid defect has been clarified by the opposite parties No.2 & 3 in the written arguments that the hydrostatic lock is a situation in which the engine sucks water while crossing from the air cleaner and water enters to the cylinder bore of engine which in turn causes buckling of connecting rod and damaging other components of engine like bore,

engine bearing crank shaft etc. The cause of said problem is attributed to external reasons i.e. entry of water in the engine. The complainant was informed about the aforesaid defect by the complainant through email dated 31st July, 2021 copy of which is Annexure-C30. In the said email, it has been specifically mentioned that on inspection it was observed that the connecting rod was bend and broken, which caused further consequential damages to the engine assembly. Based on available evidence and pattern of breakage of connecting rod the same confirms the case of 'hydrostatic lock'. Hence the aforesaid evidence led by the opposite parties No.2 & 3 established that the engine of the car of the complainant had seized due to hydrostatic lock, which was caused due to entering of water in the engine.

12. Here, the terms and conditions of warranty are relevant, copy of which is Annexure-C9. Condition No.2 deals with the limitation for which the benefit of extended warranty would not be applicable. Limitation 2 (h) is relevant, which states any defects caused by misuse, negligence, abnormal use, insufficient care, abuse, flooding or fire. So, the case of flooding or entering of water in the engine is not covered under the extended warranty. Consequently, the opposite parties are justified in not repairing the car of the complainant free of cost.

13. For the aforesaid reasons, it appears that the defect in the engine of the car of the complainant occurred due to negligence of complainant himself. So, the opposite parties were justified in charging money from the complainant for the repair of car. There is no deficiency in service or unfair trade practice on the part of the opposite parties.

14. Consequently, in the light of our aforesaid discussion, the present complaint lacks merit and the same is hereby dismissed. Parties to bear their own costs. With these observations, the present complaint stands disposed of.

15. Copy of this order be supplied to the parties free of cost as per Rules.

16. File, after due completion be consigned to the Record Room.

Announced on this the 18th day of June, 2024.

(Purender Vaidya)
President

(Nitin Kaundal) (Manjula) Members

Ramesh