NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1614 OF 2022

(Against the Order dated 31/05/2022 in Appeal No. 309/2019 of the State Commission Karnataka)

1. MARUTI SUZUKI INDIA LIMITED ....Petitioner(s)

Versus

1. HENRY D'SOUZA & 2 ORS.

S/O. SIMON D'SOUZA, NO. 3 - 73, R.L. MANSION, MITHABAIL POST, PUTHIGE VILLAGE, MOODABIDRE, MANGALORE TALUKA, KARNATAKA.

2. THE MANAGER BHARATH AUTO CARE (P) LTD.

...

3. THE MANAGER BHARATH AUTO CARE (P) LTD. EXT. OUTLET BRARATH DEEDI COMPUND ....

... .Respondent(s)

REVISION PETITION NO. 1529 OF 2022

(Against the Order dated 31/05/2022 in Appeal No. 176/2019 of the State Commission Karnataka)

1. MANAGER, BHARATH AUTO CARS (P) LTD. & ANR. ....Petitioner(s)

Versus

1. HENRY D'SOUZA & ANR. ....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE PETITIONER :

Dated : 03 June 2024

ORDER

RP/1529/2022

For the Petitioner(s) : Mr. Vaibhav Sabharwai, Advocate

For the Respondent(s) : Mr. Shekhar G. Devasa, Advocate for R-1

Mr. T.K. Ganju, Senior Advocate for R-2

Mr. Aquib Ali, Advocate

Mr. Anish Lakhan Pal, Advocate

RP/1614/2022

For the Petitioner : Mr. T. K. Ganju, Senior Advocate

Mr. Aquib Ali, Advocate

Mr. Anish Lakhan Pal, Advocate

For the Respondents : Mr. Shekhar G. Devasa, Advocate

Mr. Manish Tiwari, Advocate

Ms. Thashmitta M., Advocate

Mr. Vaibhav Sabharwal, Advocate for R-2 & R-3

ORDER

1. The two present Revision Petitions (RPs) has been filed by the Petitioner(s) against Respondent(s) as detailed above, under section 58(1)(b) of Consumer Protection Act 2019, against the common order dated 31.05.2022 of the State Consumer Disputes Redressal Commission, Karnataka, (hereinafter referred to as the 'State Commission'), in First Appeals (FAs) No. 176/2019 & 309/2019 in which order dated 02.01.2019, District Consumer Disputes Redressal Commission, Dakshina Kannada (hereinafter referred to as District Commission) in Consumer Complaint (CC) no. 235/2016 was challenged, inter alia praying to set aside the order passed by the State Commission and District Commission.

2. In RP/1529/2022, the Revision Petitioners (hereinafter also referred to as OP-2 & OP-3) were Appellants-1 & 2 in FA/176/2019; Respondents-2 & 3 in FA/309/2019 before the State Commission and Respondents-2 & 3 before the District Commission. In RP/1614/2022, the Revision Petitioner (hereinafter also referred to as OP-1) was Respondent-2 in FA/176/2019; Appellant in FA/309/2019 before the State Commission and Respondent-1 before the District Commission. The Respondent-1 (hereinafter also referred to as Complainant) was Respondent-1 before the State Commission in both the Appeals and Complainant before the District Commission.

The RP/1529/2022 has been filed by OP-2 & 3 against complainant and OP-1 and RP/1614/2022 has been filed by OP-1 against Complainant and OP-2 & OP-3 arising out of the common order dated 31.05.2022 of the State Commission in FAs FA/176/2019 and

FA/309/2019. As common issues are involved, in the two cases, they are taken up together. However, RP No. 1529/2022 is taken as lead case for presenting facts.

3. Notice was issued to the Respondent(s). Delay in filing RP/1614/2022 is condoned after considering the reasons stated in condonation of delay application (IA/11495/2022). Parties filed Written Arguments/Synopsis on 18.08.2023 (OP-1); 22.08.2023 (Complainant) and 23.08.2023 (OP-2 & OP-3) respectively.

4. Brief facts of the case, as claimed by the complainant, and as emerged from other case records are that:-

The Complainant purchased a Maruti Suzuki Celerio VDI with registration number KA-19-MF-7715 on 11.11.2015, from OP-1, which is the manufacturer of the vehicle. This purchase was made through OP-3, who is an authorized dealer of OP-1. Additionally, OP-2 also holds authorization as a dealer of OP-1's vehicles. Immediately after purchasing the vehicle, the Complainant noticed irregularities in the engine, characterized by uneven and rough sounds. This issue was reported to OP-3, who assured the Complainant that it would be addressed during the first free service. However, despite this assurance, OP-3 failed to identify the cause of the engine issue or repair it. On 24.04.2016, when the Complainant attempted to start the vehicle, the engine failed to start despite multiple attempts. This was reported to OP-3, who sent mechanics to address the issue, but they also failed to start the vehicle. Consequently, the vehicle was towed to the service center of OP-3. Surprisingly, without informing the Complainant of the specific issue with the vehicle, OP-3 issued a job card estimating the cost of replacing spare parts at Rs. 25,000/- and labor charges at Rs. 10,000/-, despite the vehicle being under warranty. Subsequent to the Complainant signing the job card, OP-3 made unauthorized additions to the job sheet, falsely indicating that engine oil was mixed with water for engine overhaul, and changed the date on the job card from 28.04.2016, to 29.04.2016.

As OP-3 failed to carry out the repairs, the Complainant was compelled to purchase another vehicle due to the defects in the original one. Consequently, the Complainant filed a complaint against the OPs, alleging deficiency in service, and sought a refund of the amount paid for the defective vehicle.

5. Vide Order dated 02.01.2019, in the CC no. 235/2016 the District Commission has allowed the complaint and directed OP-1 to OP-3 to pay complainant a sum of Rs. 6,29,669/- with interest @8% p.a. from the date of complaint till payment.

6. Aggrieved by the said Order dated 02.01.2019 of District Commission, Petitioner(s) appealed in State Commission and the State Commission vide common order dated 31.05.2022 in FA No.176/2019 & 309/2019 has dismissed the appeals and upheld the order of District Commission.

7. Petitioner(s) have challenged the said common Order dated 31.05.2022 of the State Commission mainly on following grounds:

Grounds from RP/1529/2022 (OP-2 & 3)

i. The State Commission and the District Commission both erred in neglecting the absence of evidence or technical proof provided by the Complainant to substantiate the alleged defect in the vehicle. Furthermore, the failure to present expert opinion or examination by experts to support the claim undermines the credibility of the complaint. The State Commission's oversight regarding the necessity of proper analysis or testing to determine the alleged defect in the vehicle is noteworthy. The District Commission's failure to refer the matter to an appropriate laboratory or expert for analysis casts doubt on the validity of allowing the complaint. Additionally, the District Commission's failure to make any specific finding regarding the alleged defect in the vehicle, beyond a general assertion based on a newspaper article, highlights deficiencies in the decision-making process.

ii. The mischaracterization of the case as one concerning deficiency of services, rather than addressing the alleged defects in the vehicle, intensifies the errors in judgment. Moreover, reliance solely on a newspaper article to assert that the vehicle suffered from a manufacturing defect, without considering other pertinent factors such as market trends and industry practices, is inappropriate. The discontinuation of diesel variants by automobile manufacturers does not necessarily imply a manufacturing defect, and basing conclusions solely on such reasoning is flawed.

iii. The lower forums failed to acknowledge that the Complainant was responsible for mixing water with the engine oil, a fault that cannot be attributed to the present OPs. Additionally, they incorrectly shifted the burden of proof onto the OPs to demonstrate the absence of any defect in the vehicle, disregarding the Complainant's obligation to prove the alleged defect. Moreover, the lower forums overlooked the job cards presented by the Complainant, rendering it impossible for the OPs to refute them. They also failed to acknowledge that the vehicle in question had already covered a significant distance, suggesting potential misuse or wear and tear prior to the present proceedings. Furthermore, they disregarded crucial facts, such as the lack of any plea by the

Complainant regarding their status as a 'consumer' under the Consumer Protection Act, 1986/2019. Additionally, the lower forums neglected to recognize the Complainant's ulterior motive in fabricating a false story to extract money from the OPs.

Grounds from RP/1614/2022 (OP-1)

iv. The State Commission and the District Commission have failed to adhere to the procedure mandated by law under section 38(2)(c) of the Consumer Protection Act, 2019, as they neglected to appoint or seek the opinion of an expert, which is mandatory in such circumstances as per judgments of the Hon'ble Supreme Court and this Commission. Both fora also overlooked the fact that the manufacturer and the dealer engage in a "principle to principle" transaction. The vehicles are sold by the manufacturer to the dealer, who then sells them to various customers under its own invoices. The day-to-day service, repair, and warranty obligations are the responsibility of the dealer, not the manufacturer. The manufacturer is only liable under the warranty policy to replace any defective parts of the vehicle, as established by the Hon'ble Supreme Court in the case of '**Maruti Suzuki Ltd. Vs. Susheel Kumar Gabgotra & Anr.**' (2006) 4 SCC 644. Therefore, the manufacturer cannot be directed to replace the entire vehicle.

v. Both fora gravely erred by failing to recognize that the primary issue in this case pertains to the engine of the vehicle being seized due to water found in the engine oil, as mentioned in the dealer's job sheet. It is illogical to attribute responsibility to the manufacturer or conclude a manufacturing defect based on this. This constitutes a grave error and material irregularity, as they failed to follow the procedure prescribed under section 38(2)(c) of the Consumer Protection Act, 2019. Furthermore, both fora failed to appreciate that even if the engine was seized, it is a well-known fact that it is repairable by replacing the necessary parts. The controversy revolves around whether the water mixed with the engine oil is covered by the warranty clause and whether it was justified for the dealer to ask the complainant to pay for the repair of the vehicle, which he refused, resulting in the return of the vehicle. Despite these admitted facts, the fora below committed a grave material irregularity by directing a refund of the vehicle's cost, even though the vehicle remains with the complainant.

vi. The State Commission simply endorsed the view of the District Commission without adequately addressing the grounds of appeal and objections raised by the OPs, including judgments of the Hon'ble Supreme Court and this Commission, which directly relate to the point of controversy. The judgments such as '**C.N. Anantram Vs. Fiat India Ltd. & Anr.**' (2011) 1 SCC 460 and '**Maruti Suzuki Ltd. Vs. Susheel**

Kumar Gabgotra & Anr.' (2006) 4 SCC 644, establish principles regarding manufacturing defects in vehicles. Both fora failed to acknowledge that the job cards on record do not contain any instance of a complaint by the complainant regarding rough sounds from the engine of the vehicle. Therefore, the finding concerning rough sounds due to a manufacturing defect is erroneous and demonstrates a material irregularity in the exercise of their jurisdiction.

vii. Additionally, the State Commission erred in failing to recognize that if some sound is emanating from the engine without affecting the functioning of the vehicle, it cannot be considered a manufacturing defect according to the terms of the warranty policy. The State Commission overlooked the fact that on 24.04.2016, the vehicle was brought to the dealer's workshop in a breakdown condition, which casts doubt on the presumption of the dealer mixing water with the engine oil. It is more reasonable to conclude that the complainant himself poured water into the engine. Furthermore, the State Commission failed to consider that the Complainant did not dispute his signatures on the job card and job sheet dated 24.06.2016. Therefore, it can be inferred that the complainant was aware of the reasons for the vehicle breakdown. Given this admission, the burden heavily lies on the complainant to prove the circumstances under which he signed the job cards. The foras below gravely erred in concluding that the discontinuation of a model by the OP indicates manufacturing defects. Such a conclusion is based on assumptions and presumptions. It is a consistent policy of Maruti Suzuki India Ltd. and various other manufacturers to continuously upgrade models and introduce new ones, which does not necessarily imply manufacturing defects.

viii. Additionally, fastening liability on the manufacturer for alleged actions by the dealer is unjust and unreasonable. The complainant’s claim that the dealer manipulated the job sheet without any evidence of such manipulation against the manufacturer is unfounded. The relationship between the OP and the dealer is one of principal to principal, and the OP cannot be held liable for the dealer's actions. The impugned order is unjust and unreasonable since the complainant, who is in possession of the vehicle as per the order, has been granted a refund of the entire cost of the vehicle without any condition to return the alleged defective vehicle to the OP. The State Commission failed to appreciate that the warranty obligation binding on the parties has been completely ignored. According to the warranty policy, the sole obligation of the OP is to replace or repair the defective part. The impugned order was passed on 31.05.2022, and therefore, there is some delay in filing the present revision petition. However, the OP has not been served with a copy of the order passed by the State Commission to date. The OP became aware of the dismissal of the appeal by the State Commission upon receiving warrants from the Executing Court in the present matter. Prior to this, the OP had no knowledge of the impugned order. The Petitioner has also filed a separate application seeking condonation of delay in filing the present petition.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

i. The counsel representing OP-1 argued that upon analyzing the job cards submitted as evidence, it is apparent that there were no complaints regarding uneven or rough sounds from the complainant during their visits to the dealer's workshop. Furthermore, as per clause 4(13) of the warranty provided by OP-1, insignificant defects such as sound vibration and fluid seep, which do not affect the vehicle's function, are not covered under warranty. Hence, even if there were some noise in the engine, it cannot be considered a defect, much less a manufacturing defect. The noise level of a vehicle's engine can vary depending on driving conditions and road quality. The crux of this case revolves around the engine of the vehicle being seized due to water found in the engine oil, as mentioned in the dealer's job sheet. In such a scenario, attributing responsibility to the manufacturer/OP-1 or concluding the existence of a manufacturing defect in the vehicle is illogical.

ii. Furthermore, considering that the vehicle was brought to the dealer's workshop in a breakdown condition on 24.04.2016, it defies logic to presume that the dealer mixed water with the engine oil. The reasonable inference would be that either the complainant drove the vehicle through water or the vehicle was involved in an accident contributing to this issue. Additionally, if water had indeed been present in the engine oil, the vehicle would not have been able to cover more than 3,000 kilometers. The lower Forums did not provide any finding indicating that the defect in the vehicle was such that it could not be repaired. In the absence of such a finding, it cannot be presumed that the vehicle had a manufacturing defect. Moreover, the complainant did not dispute their signatures on the job card and job sheet dated 24.06.2016. Therefore, it can be inferred that the complainant was aware of the reasons for the vehicle breakdown. In such circumstances, it can be inferred that the complaint was filed with the intention to avoid paying repair charges to the dealer or to obtain a replacement vehicle.

iii. Furthermore, concluding that the water could have been mixed by the dealer or manufacturer without following the prescribed procedure under Section 38(2)(c) of the Consumer Protection Act, 2019, is illogical. Even if the engine was seized, it is well-known that it can be repaired by replacing the necessary parts. Therefore, without admitting any manufacturing defect, the petitioner is only liable under the warranty policy to replace any part of the vehicle that is admitted or established to be defective, as held by the Hon'ble Supreme Court of India in the case titled **'Maruti Suzuki Ltd. Vs. Susheel Kumar Gabgotra and Anr.** (2006) SCC 644'. The decision in **Gopal Aggarwal vs. Metro Motors** MANU/CF/0920/2019 elaborately discusses the mandatory procedure under Section 13 of the COPRA, 1986 Act and Section 38 of the

Consumer Protection Act, 2019. It emphasizes the importance of following the prescribed procedure to determine defects in goods, which includes referring the goods to an appropriate laboratory, providing the report to the opposite party, inviting objections to the report, and affording both parties an opportunity to be heard before passing an order. If it is not feasible to refer the goods to a recognized laboratory, recourse can be taken to a government-financed or aided laboratory or organization with the requisite expertise. Fastening liability on OP-1 is untenable, especially when the relationship with the dealer is on a principal-to-principal basis. Additionally, discontinuation of a model by the manufacturer cannot automatically imply a manufacturing defect, as it is a common industry practice to upgrade and launch new models.

iv. The counsel for OP-1 relied on following cases:-

a. **Maruti Suzuki Ltd. vs. Susheel Kumar Gabgotra and Anr.** (2006) 4 SCC 644

b. **Sushila Automobiles Pvt. Ltd. vs. Dr. Birendra Narain Prasad & Ors.** 2010 SCC Online NCDRC 144

c. **C.N. Anantharam vs. Fiat India Ltd. & Ors.** (2011) 1 SCC 460

d. **Maruti Udyog vs. Atul Bharadwaj & Anr.**, I (2009) CPJ 270 (NC)

e. **Classic Automobiles vs. Lila Nand Mishra & Anr.**, I (2010) CPJ 235 (NC)

f. **Amar Kumar Saraswat vs. Volkswagen Group Sales India Pvt. Ltd. & Anr.**, 2020 SCC Online NCDRC 54

g. **Gopal Aggarwal Aggarwal Jewellers v. Metro Motors,** 2019 SCC OnLine NCDRC 754

"23. 'defect' has to be determined as per the procedure prescribed, that is, the goods concerned have to be referred to an appropriate laboratory, the report from the appropriate laboratory has to be provided to the Opposite Party, if any side disputes the correctness of the findings or the methods of analysis or tests adopted by the appropriate laboratory, objections in writing in regard to the report of the appropriate laboratory have to be invited, and opportunity has to be afforded to both sides of being heard as to the correctness or otherwise of the report, before passing an appropriate order under Section 14.

24. The procedure prescribed cannot be circumvented as being, say, a 'mere technicality' etc. A bare reading of the procedure prescribed in Section 13(1)(c) to (g) shows that its objective is to ensure that 'defect' is determined after obtaining impartial expert technical analysis or tests and after hearing both sides on the report, and the findings so arrived at pass credence in scrutiny. That being so, non-adherence to the procedure prescribed vitiates the findings.

25. 'appropriate laboratory' is defined under Section 2(1)(a) of the Act:

Section 2(1)(a):

(a) "appropriate laboratory" means a laboratory or organisation—

(i) recognised by the Central Government;

(ii) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(iii) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

26. When 'defect' in the Car, in its manufacture, was alleged, the District Forum was required to refer the Car to a laboratory or organization as defined under Section 2(1)

(a) (i) or (ii) or (iii).

27. Here we may add that, if, due to any reason, it was not feasible for the District Forum to refer the Car to a laboratory or organization recognized by the Central or the State Government under Section 2(1)(a) (i) or (ii), it was still feasible for it to take recourse to Section 2(1)(a) (iii) and refer the vehicle to a government financed or aided laboratory or organization having the requisite expertise and technical wherewithal for the purpose, as, for example, a government financed or aided Institute or College of Engineering or Technology, whose repute & expertise speaks for itself, and whose report would pass credence in scrutiny."

h. **Tata Motors Ltd. vs. Antonio Polo Vaz and Ors. MANU/SC/0099/2021** held that unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its relationship with a dealer was on a principal-to-principal basis.

i. **Naval Kishor Sharma vs. State of UP 2022 SCC OnLine All 677**

"20. … newspaper report by itself does not constitute an evidence of the contents of it. The reports are only hearsay evidence. They have to be proved either by production of the reporter who heard the said statements and sent them for reporting or by production of report sent by such reporter and production of the Editor of the newspaper or it's publisher to prove the said report. It has been held by the Apex Court that newspaper reports are at best secondary evidence and not admissible in evidence without proper proof of its content under the Indian Evidence Act, 1872. It is thus clear that newspaper report is not a "legal evidence" which can be examined in support of the complainant."

v. The counsel representing OP-2 and OP-3 argues that the Complainant has failed to provide substantial evidence supporting the alleged defects in the vehicle since its purchase. They contend that the burden of proof rests with the Complainant, yet no documentation has been presented to establish any pre-existing defects in the vehicle. Additionally, they highlight that the first complaint regarding the vehicle's condition was lodged only after it experienced a breakdown and was towed to the workshop. The absence of expert analysis or technical evidence further weakens the credibility of the allegations. The counsel emphasizes the necessity for expert evaluation to determine if the vehicle indeed had defects from the time of purchase, a step overlooked by the District Commission, which is mandated by consumer protection laws. They assert that the findings of the lower fora relied on assumptions and a newspaper article, disregarding established legal principles. Furthermore, they refute the application of

reverse burden of proof on the OPs, arguing that there is no substantiated evidence indicating their involvement in mixing water with the engine oil, especially given that the vehicle was non-operational when brought to the workshop. They propose alternative scenarios, such as driving through flooded roads or visiting unofficial service centers, that could have led to water mixing with the engine oil. The counsel underscores that the vehicle was not delivered to the workshop of OP-2 and OP-3 in a functional state, as acknowledged by the Complainant's own account, stating that the engine failed to start, necessitating towing to the workshop.

vi. There is a notable absence of evidence indicating that the Complainant communicated any concerns or defects regarding the vehicle to OP-2 and OP-3 from the date of purchase until the issuance of the legal notice on 25.05.2016. The job cards on record fail to document any grievances raised by the Complainant before this date. Additionally, it is noteworthy that the Complainant proceeded to purchase a second-hand car from OP-2 and OP-3 after allegedly experiencing defects in the initial purchase. Such behavior appears inconsistent with someone who had encountered significant issues with the vendor's product from the outset. Furthermore, regarding the purported alterations in the job card, there is a lack of evidence presented by the Complainant to substantiate this claim. The job card primarily reflects cost estimates for repairs, and it bears the Complainant's signature without any indication of subsequent alterations.

vii. The absence of any mention by the Complainant regarding alterations in the job card in his letter dated 14.05.2016 is notable. Additionally, as no repairs were undertaken without the Complainant's explicit approval, only the engine underwent inspection after dismantling. Following the inspection, the vehicle was returned to the Complainant's residence, a detail not initially disclosed in the complaint. Consequently, the conclusion drawn by the lower fora regarding alterations in the job card lacks a substantive basis. Furthermore, the lower fora overlooked the fact that the vehicle was already in the possession of the Complainant prior to the filing of the complaint. The absence of any directive to return the vehicle in the orders issued by the lower fora indicates a failure to recognize this aspect. Additionally, the coverage of the Warranty Policy is called into question, as it explicitly excludes certain defects arising from misuse, negligence, or abnormal use.

viii. The counsel for the complainant argued that the case revolves around the purchase of a Maruti Suzuki Celerio vehicle by the complainant from the authorized dealer of OP-1. From the outset, the vehicle exhibited a rough sound in the engine, a matter that was promptly reported to the dealer (OP-2 & OP-3) but remained unresolved. Despite the complainant's efforts to rectify the issue, the dealer estimated significant repair costs, including the replacement of engine parts, without warranty coverage. The District Commission ruled in favor of the complainant, holding OP-1 and the dealers jointly and

severally liable to refund the cost of the vehicle, along with interest and compensation. The forum attributed the responsibility for the engine issues to OP-1/Manufacturer, citing circumstantial evidence indicating their culpability. Furthermore, the discontinuation of the vehicle model by OP-1 suggested a serious defect in the engine.

ix. In its order dated 30.05.2022, the State Commission made several pertinent observations. It noted that there was no evidence suggesting that the complainant mixed water in the engine oil, and it was unreasonable to presume that the complainant, who made a significant investment in purchasing the car, would intentionally damage the engine. The discontinuation of the Maruti Suzuki Celerio Diesel model was seen as indicative of a serious defect in the engine, supporting the inference of a manufacturing defect. The manufacturer and dealer failed to provide substantial reasons for the high sound in the engine from the first day of purchase, a matter falling within the warranty and indicative of a manufacturing defect. Moreover, in its subsequent notice issued on 07.12.2022, the Commission criticized OP-1's defense, stating that as the manufacturer, it is accountable for defects in its cars, irrespective of the transaction particulars between the buyer and the dealer. The Commission also emphasized that the petitioner's reliance on the argument that it was not a party to the purchase agreement and should not be held liable lacked merit.

x. The counsel for complainant relied on the following judgements:

a. **K.K. Velusamy vs. N. Palanisamy** (2011) 11 SCC 275

b. **Abhaya Kumar Panda vs. M/s Baja Auto Ltd.** FA/83 & 90/1991 decided on 10.12.1991

(c) **Tata Engineering & Locomotive Co. Ltd. & Anr. Vs. Gajanan Y. Mandrekar** (1997) 5 SCC 507

9. We have carefully gone through the orders of the State Commission, District Commission, other relevant records and rival contentions of the parties, it is evident that the complainant acquired a Maruti Suzuki Celerio vehicle. Upon scrutiny of the job card dated 24.04.2016, it appears that there was an alteration made by OP-3, where references to "engine oil mixed with water for engine o/h" were added, and the date was modified from 28.04.2016 to 29.04.2016, notwithstanding the notation at the top indicating "customer not signed job slip." It is our considered opinion that OP-2 and OP-3 displayed a deficiency in

service by neglecting to execute the requisite service on the vehicle and attempted to manipulate the complainant through such modifications without sufficient justification.

In **Maruti Udyog Ltd. vs. Hasmukh Lakshmichand and Anr.** 2009 SCC OnLine NCDRC 74, the National Commission observed that:-

".....The onus to prove the defect is on the complainant. Section 13(1)(c) of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act' for short) provides that if a complainant alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain sample of the goods from the complainant, seal it and send it to such Laboratory which makes an analysis or test whichever may be necessary with a view to find out whether such goods suffer from defect alleged in the complaint or from any other object and report it back to the District Forum based on which the District Forum determines the dispute between the parties.....

....The "manufacturing defect" is much more than an ordinary defect which can be cured by replacing the defective part. "Manufacturing defect" is fundamental basic defect which creeps while manufacturing a machinery. To prove such a defect, opinion of an Expert is necessary which is not forthcoming in the present case. Attempt made by the manufacturer to get the opinion of an Expert or an independent agency has been thwarted by the respondent/complainant by not handing over the car for taking it to the ARAI for inspection……"

Upon a comprehensive review of all available records, it is observed that the complainant failed to substantiate a defect in the vehicle. There is absence of expert evidence or technical reports to corroborate any defect. We dissent from the lower fora's findings regarding a manufacturing defect. The reliance on a newspaper article or extract cannot serve as evidentiary support or substantive proof of a defect, and the cessation of a model does not inherently imply a defective product, thereby exonerating OP-1 from liability. Nevertheless, the complainant is entitled to relief solely on the grounds of service deficiency by OP-2 and OP-3. Given that the essence of this case revolves around the issue of oil mixing with the engine, the contention by OP-2 and OP-3 that the complainant himself mixed water with the engine oil lacks logical rationality. This assertion could not be supported by any form of evidence. Hence, in such circumstances, the benefit of doubt must go in favour of the complainant. It was held by Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Harsolia Motors**, (2023) 8 SCC 362 observed as under:

"24. The provisions of the 1986 Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit-oriented legislation. The primary

duty of the Court/Commission while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to attempted objective of the enactment."

The complainant purchased the vehicle on 11.11.2015 for Rs. 5,02,175/-. The complainant approached OP-3 for repairs on 24.04.2016, which is about six months from the purchase date, and at that time, the vehicle had covered 3063 km. hence, if we have to assess the value of vehicle at the time of sending it to OP-3 for repairs, we have to take its depreciated value. Taking the rates of depreciation prescribed under IMT (Indian Motor Tariff) depreciation @ 5% is applicable for vehicles not exceeding six months of age. Thus, Rs. 25,108/- (5% of Rs. 5,02,175/-) is to be deducted from the original price of the vehicle, resulting in its depreciated value of Rs. 4,77,067/-. In this case, District Commission has ordered payment of Rs. 6,29,669/- with interest, that too without ordering return of the vehicle, which is currently with the complainant. Hence, order of District Commission need some modification in this regard.

Accordingly, we hold that OP-2 and OP-3 are jointly and severally liable, and are directed to pay the sum of Rs. 4,77,067/- only with interest at 6% per annum from 24.04.2016 until the date of payment. The complainant is directed to return the vehicle to OP-3. OP-2 and OP-3 will bear the cost of transportation of the vehicle from the location of complaint. OP-2 and OP-3 shall comply with this order within 30 days of this order, failing which the amount payable at the end of 30 days shall carry interest at 12% per annum till the date of payment.

Hence, in view of the foregoing we allow RP/1614/2022, and exonerate OP-1 from any liability and modify the order of District Commission and State Commission accordingly, holding only OP-2 & OP-3 liable jointly and severally. The order of District Commission in RP/1529/2022 is modified to extent stated above.

10. The pending IAs in the cases, if any, also stand disposed off.

....

DR. INDER JIT SINGH
PRESIDING MEMBER