

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1054 OF 2016

(Against the Order dated 17/06/2016 in Complaint No. 329/2013 of the State Commission
Maharashtra)

1. HONDA CARS INDIA LTD.

THROUGH ITS ZONAL OFFICE-WEST, D-126, TTC
INDUSTRIAL AREA, MIDC SHIRAVANE, NERUL, THANE
BELAPUR ROAD,
NAVI MUMBAI-4000706
MAHARASHTRA

.....Appellant(s)

Versus

1. USHAT GULGULE

SON OF MR. CHARUHAS GULGULE, R/O. A-703,
SKYLARK, JUHU VERSOVA LINK ROAD, OPP. VIKRAM
PETROL PUMP, ANDHERI (W)

MUMBAI-400053

MAHARASHTRA

.....Respondent(s)

FIRST APPEAL NO. 1074 OF 2016

(Against the Order dated 17/06/2016 in Complaint No. 329/2013 of the State Commission
Maharashtra)

1. USHAT GULGULE

A-703, SKYLARK JUHU VERSOVA LINK ROAD
OPPOSITE VIKRAM PETROL PUMP ANDHERI WEST

MUMBAI-4000053

MAHARASHTRA

.....Appellant(s)

Versus

1. HONDA CARS INDIA LTD.

PLOT NO. A-1, SECTOR-40/41, SURAJPUR-KASNA ROAD,
GREATER NOIDA INDUSTRIAL DEVELOPMENT AREA,
DIST. GAUTAM BUDH NAGAR,

UTTAR PRADESH-201306

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT :

Dated : 02 April 2024

ORDER

For the Appellant Mr Amol Chitale, Ms Shweta Singh Parihar

Mr Sarthak Sharma and Ms Priya S Bhalerao

Advocates

For the Respondent Mr Sachin Saini, Advocate Proxy

ORDER

PER MR SUBHASH CHANRA

1. This appeal under Section 19 with Section 21(a)(ii) read with of the Consumer Protection Act, 1986 (in short, the 'Act') challenges the order dated 17.06.2016 of the State Disputes Redressal Commission, Maharashtra, Mumbai (in short, the 'State Commission') in Complaint Case No. CC/13/329 partly allowing the appeal and directing the appellant herein to pay compensation of Rs 1,00,000/- within two months to the respondent failing which to pay the same with interest @ 9% pa till realization along with costs of Rs 25,000/-. Appellant has prayed to set aside the impugned order and to dismiss the complaint with costs and to pass such order(s) as deemed fit and proper.

2. This order will also dispose of FA No. 1074 of 2016 filed by the Respondent herein against the Appellants which also emanates from the same order. As the facts of the case are similar, FA 1054 of 2016 is taken as the lead case.

3. The relevant facts of the case, in brief, are that the respondent purchased a Honda Civic 1.8 S MT car from the appellant through Kothari Auto Link Pvt. Ltd. for Rs 13,20,003/- from Crystal Honda, Pune Maharashtra. The car met with an accident on 01.03.2013 on the Western Express Highway and the front portion of the car was damaged and the respondent received injuries to his left arm and shoulder that required medical treatment on which he spent Rs 40,000/-. The respondent approached the State Commission through a Consumer Complaint seeking various compensations which was decided on contest. According to the respondent the safety air bags in the car failed to deploy despite the severe impact on the front portion of the car which was attributed to a manufacturing defect of the car. The appellant informed the respondent after inspection of the car that the external impact in the upper front had caused the car to gradually decelerate and the required conditions were not met for the sensors to deploy the airbags, which are designed to deploy only under certain specific conditions as a safety mechanism. It was stated that the respondent had not worn the seat belt as prescribed which was also a reason for the airbags not opening at the time of the accident. The car was repaired to the satisfaction of the respondent and therefore there was no case for damages. The State Commission, after hearing the submissions of both parties, arrived at the conclusion that there was no expert opinion on record to support the appellant's submission that use of the seat belt was a necessary condition for the airbags to open. Its finding was that when the car had met with an accident the impact of which was so forceful, the airbags should have opened as a safety feature for which the respondent had paid while purchasing the car. It was noted that as per newspaper reports, Honda Cars had recalled approximately 58,000 cars due to defects in airbags. It was held that while the insurance

claim of Rs 1,60,000/- had been received from the insurer, the respondent's claim of Rs 43,50,000/- as compensation and costs of Rs 25,000/- was not justified. Consequently, compensation of Rs 1,00,000/- was considered fair and just along with litigation costs of Rs 25,000/- to be paid within two months failing which with interest @ 9% p.a. till realization. This order is impugned before us.

4. We have heard the learned counsel for both the parties and given careful consideration to their submissions and the material on record.

5. Appellant's contentions are that the complaint was bad for misjoinder of parties since the Dealer with whom the appellant has a 'principal to principal' relationship and from whom the car was purchased was not made a party. It was argued that the respondent had not contended that the car suffered from a manufacturing defect and therefore the manufacturer cannot be held liable under the Act unless this was proved. The respondent relied upon a brief opinion from the Western India Automobile Association which did not constitute an 'Expert Opinion' under Section 13(1)(c) of the Act and did not state that there was a manufacturing defect. It was contended that the accident was a non frontal collision close to SRS sensors and therefore the airbags did not deploy. There was also no extreme, offset collision with an oncoming vehicle or impact with a stationary obstacle resulting in sudden deceleration warranting deployment of the airbags as per the car's Manual. Reliance was placed on various case laws, *inter alia*, the Hon'ble Supreme Court's judgment in **Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. & Ors.**, (2009) 14 (Addl.) SCR 424 regarding 'expert opinion' and on this Commission's judgment in **Brijesh Saxena & Ors. Vs Skoda Auto A.S. & Ors.**, (2014) SCC OnLine NCDRC 926 which held that a technical expert's report was essential to establish manufacturing defect in a case where airbags did not deploy. It was argued that the respondent's reliance on the Hon'ble Supreme Court's judgment in **Hyundai Motor India Ltd. Vs. Shailendra Bhatnagar**, 2022 SCC OnLine SC 483 was distinguishable from the present case since the respondent's case was that even though he had not prayed for the replacement of the vehicle, he was entitled to the same. It was contended that the judgment itself stated that it was considered 'in the facts of this case' and is therefore not a binding precedent.

6. *Per contra*, learned counsel for the respondent submitted that the price of the car with air bags was higher and the premium paid was for the additional safety feature provided by the air bags. The cost of repairs of the car was Rs 1,93,983/- apart from the serious injuries due to a ligament tear in the left shoulder suffered by the respondent which took 6 months to heal. According to the respondent, the report of the Western India Automobile Association constituted an 'Expert Opinion' and it had stated that the air bags ought to have opened given the nature of the accident. Reliance was placed on a report in the *Times of India* newspaper dated 09.09.2015 that the Appellant Company had recalled nearly 2,00,000 Honda Civic sedan cars between 2003 and 2012 due to problems with airbags. Since the appellant defended the non-deployment of air bags on specious grounds and denied that there was a manufacturing defect in the air bags, punitive damages of Rs 25,00,000/- had been claimed. However, the impugned order had failed to impose punitive damages under Section 14 of the Act and despite the Hon'ble Supreme Court having invoked the doctrine of punitive damages in **Hyundai Motor India Ltd.** (supra), directing replacement of the vehicle even though the relief was not specifically claimed.

7. The main issue in this case is whether the non-deployment of the airbags constituted a manufacturing defect warranting the invoking of the doctrine of punitive damages as claimed by the respondent (complainant before the State Commission). The schema of the Consumer Protection Act, 1986 clearly provides for the establishment of a 'deficiency' under Section 13 and, if established, for remedies/compensation under Section 14. However, it also mandates the requirement of an expert opinion from an 'appropriate laboratory' which is defined in Section 2 (1) (a) as under:

2. Definitions: In this Act, unless the context otherwise requires,—

- 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;

It is apposite at this stage to recall the relevant provisions of the Act which are extracted below:

13. Procedure on admission of complaint – (1) The District Forum shall, [on admission of a complaint], if it relates to any goods -

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

14 (1) Finding of the District Forum – (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complainant or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to [do] one or more of the following things.

8. From a reading of the provisions of the Act, the establishment of a good to have inherent defects, a Consumer Forum has to necessarily obtain a report from a person/organization who is an expert in the field and is an 'appropriate' agency as defined under the Act. Only after the establishment of such a defect can the Forum award damages or consider award of punitive damages. Admittedly this process has not been adopted in the instant case. The report of the Western India Automobile Association cannot be relied upon

as an 'expert opinion' for the reason that it is neither an 'appropriate laboratory' as defined in Section 2(1)(a) nor does it provide any assessment of the failure of the airbags to deploy with reference to the Manual and the accident in terms of the speed, direction and location of the impact of the collision based on which a finding of whether the sensors should or should not have activated the airbags has been arrived at. In the absence of there being any technical or expert opinion as required under Section 13(1)(c), the finding of the State Commission of a defect in the car is not sustainable.

9. The reliance on newspaper reports with regard to recall of similar cars from the market is of no avail to the respondent as no further details of cars in terms of batch or chassis numbers to identify the car in question with a set of cars recalled for defective airbags has not been brought on record by the respondent. It is, therefore, not established whether the car in question was specifically liable to suffer from the same or similar defect pertaining to airbags in these cars. The nature of defect in the airbag is also not specified. This contention can, therefore, not be accepted as evidence of the airbags being defective or the car having inherent manufacturing defects.

10. The *ratio decidendi* in *Hyundai Motor India Ltd.* (supra), is based on a SRS report brought on record by the appellant himself as noted in the order. The description of the accident and the nature of impact is that the car was travelling at 100 kmph speed on the highway and had to suddenly apply brakes due to a truck in the front applying its brake all of a sudden resulting in substantial frontal damage when the airbags failed to deploy. The State Commission took the view that the principle of *res ipsa loquiter* applied and in view of the concurrent findings of the State and National Commissions that expert opinion was not necessary, the Hon'ble Supreme Court held that the safety standards fell short of the expected quality. The facts of the instant case are distinguishable in that the nature of the accident and collision is not one of a car travelling at high speed on the highway.

11. The State Commission's finding that the respondent was entitled to some compensation is based, *inter alia*, on the fact that the insurance amount of Rs 1,60,000/- stood paid and there was no evidence brought on record to establish that the use of seat belt was a condition precedent to the deployment of air bags. The insurance claim settled by the insurer at best relates to a claim for repair of the vehicle. The issue of seat belt not being required to be buckled has not been supported by any evidence. The finding of the State Commission that there was a manufacturing defect without the same being established under Section 13(1)(a) which required to be compensated under Section 14 is therefore not based on any finding of fact or legal precedent.

12. In view of the foregoing discussion, we find merit in the appeal which is accordingly allowed. The impugned order of the State Commission is set aside. Parties shall bear their own costs.

13. In light of the decision in FA 1054 of 2016 above, First Appeal 1074 of 2016 is dismissed as without merits.

14. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER