

CC/47/2023

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, PALAKKADDATED THIS THE 13th DAY OF AUGUST, 2024.

PRESENT : SRI. VINAY MENON .V,
: SMT.VIDYA A., MEMBER.
: SRI. KRISHNANKUTTY N.K, MEMBER.

DATE OF FILING:15.02.2023.

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Sanjay Krishnan N.K, Aged 29 years,
S/o.Radhakrishnapanicker N.K,
Nellikurissy, kalarikkal,
Kodiyankunnu, Edathanattukara,
Alanallur, Palakkad-678 601.
(By Adv.Manu Mohan)

- Complainant

Vs

1. Apple India Pvt. Ltd, 19th Floor,
Concorde Tower C, UB City,
No.24, Vittal Mallya Road,
Banglore, Karnataka-560 001.
(By Adv.M/s.K.mahadevan, Pravinath.A.P,
Nandakumar, Esha Suchak, Krishna Bhargav,
Divya P.R)
2. AMPLE Technologies Pvt. Ltd.,
Authorised Apple Service Centre,
UNIT No.GS 19, Ground Floor,
Sobha City mall, Puzhakkal,
Thrissur, Kerala-680 013.
(By Adv.M/s.P.Jayapal and K.Dhananjayan)

-Opposite Parties

ORDER**BY SMT.VIDYA A., MEMBER.**

1. The complainant purchased an Apple I Phone 13 Pro 256 GB from "Gulf own digital Hub, "Perinthalmanna on 29.04.2022 for an amount of Rs.95,000/-. After using it for few months, the device started showing problems like unusual battery draining and non-working of receiver speaker. On 13.12.2022, the device suddenly started showing yellow shaded screen and nothing was visible on the display. On 15.12.2022, he took the phone to the 2nd opposite party, who is an authorised service centre of the 1st opposite party. The 2nd opposite party, promised to cure the defects under warranty. On 15.12.2022, he received an e-



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mail from the 2nd opposite party stating that the device has been sent to the 1st opposite party for further diagnosis and repair. On 23.12.2022, he received a phone call from the 2nd opposite party stating that the phone is diagnosed with internal physical damage and could be repaired out of warranty only. They also gave another option to pay an additional amount of Rs.72,000/-. So that, they would replace the device with a new one.

On 26.12.2022, he received a mail stating the detailed diagnosis of the device and a message that the spares for the phone are ready and they will update him with the progress. After few minutes, he received another message stating that product is ready for delivery. The very next day he went to the 2nd opposite party for collecting the device; but he found it completely non-working. In the job card, it was written that "since complainant told that device need not be repaired under warranty, returning the device". But he had never made such a communication and only enquired about the details of damage. He refused to take the device back as it was not working.

Later, he contacted the 1st opposite party and communicated about the issues with the 2nd opposite party. After that, there was no communications from the 1st opposite party. On 01.02.2023, the 2nd opposite party contacted the complainant and told that they have no idea about the device and the current condition of the same and they are not responsible for what had happened.

The opposite parties failed to redress the grievance of the complainant till date. The acts of the opposite parties amount to deficiency in service. The acts of the opposite party in not identifying and curing the defects in the mobile phone and not giving proper customer care support had caused financial loss and mental agony to the complainant which they are bound to compensate.

On 03.02.2023, the complainant received a mail from the 2nd opposite party stating that if he is not taking the device back, he would be charged demurrage at a rate of 100 per day and after 45 days, they would dispose it if not collected. The 1st opposite party had scrapped off all the data from the device without his permission.



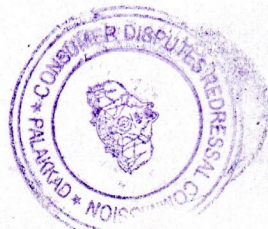
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So, he filed this complaint with the following prayers;

1. To direct the opposite parties to pay an amount of Rs.95,000/- being the price of the phone.
 2. To pay Rs.1 lakh towards damages, loss of data and delay in communication caused to the complainant.
 3. To pay Rs. 1 lakh as compensation for the mental agony and hardship caused to the complainant.
2. The complaint was admitted. The complainant also filed an application as I.A.No.90/2023 to direct the 2nd opposite party not to dispose off the phone and to produce it before the Commission. It was allowed restraining the 2nd opposite party from disposing off the Apple I phone and to keep it in their safe custody until further orders. Notices were issued to both opposite parties. They entered appearance and filed version.
3. The main contentions raised by the 1st opposite party in their version are as follows:-

They admitted the purchase of the mobile phone manufactured by them on 29.04.2022. They also admit that the complainant approached the 2nd opposite party, who is an Apple authorised service provider on 15.12.2022 with complaints of black display, receiver issue and battery draining issue. The technicians asked him to entrust the phone and issued a repair acceptance form. After inspection, they informed him that it needs to be sent to the 1st opposite party for further diagnosis and it would take 3 to 5 days.

The 1st opposite party after inspection found that the I-phone is having internal damage caused due to the foreign material present in the internal barometer and on the enclosure grills of the phone which amounts to accidental damage and it is not eligible for warranty services. They offered him an out of warranty service but the complainant failed to respond to this. Hence, the repair centre returned the I-phone to the 2nd opposite party without doing any repairs. The 2nd opposite party had informed the complainant about the findings of the 1st opposite party; but the complainant did not give permission to repair



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out of warranty or did not take back the phone. They also sent mail requesting him to collect the phone: but he did not collect it from the 2nd opposite party till date. There is no deficiency in service on their part and they prayed for the dismissal of the complaint.

4. The 2nd opposite party in their version contended that they are authorised service centre of Apple products. On 15.12.2022, the complainant approached them with complaints of black display, issues in the receiver speaker and battery draining. While accepting the phone, the complainant was specifically informed to back up all the data and it was only after approval from the customer to erase the data and after agreeing the terms and conditions, Repair Acceptance Form was generated. On inspection, the phone passed all functional tests and no anomalies were found except that the device was seen stuck at restore mode. So, as per the 1st opposite party's direction, it was sent to their Repair centre for further evaluation and they informed that the repair is not covered under warranty. It was informed to the complainant; but he kept on requesting for free service. As it was against the company policy to keep the phone for long duration, the 2nd opposite party attempted to return it. The collection of the phone after intimation is the responsibility of the complainant. There is no deficiency in service on the part of their part and the complaint has to be dismissed with their cost.
5. From the pleadings of parties, the following points arise for consideration.
 1. Whether complainant's I phone suffers from accidental damage?
 2. Whether the complainant is entitled to get the I-phone repaired under warranty?
 3. Whether the opposite parties failed to provide service to the complainant during warranty period?
 4. Whether there is deficiency in service on the part of the opposite parties?
 5. Whether the complainant is entitled to the reliefs claimed?
 6. Reliefs, if any, as cost and compensation.



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6. Complainant filed proof affidavit and Exts.A1 to A6 marked from his side. Ext.A1 is objected to on the ground that it is not issued by this opposite parties. Further, it does not contain the statutory details and is only a handwritten invoice of the opposite parties. Further, it does not contain the statutory details and is only a handwritten invoice. The objection is overruled as the opposite parties has admitted that the complainant purchased the mobile phone manufactured by the 1st opposite party. The 1st and the 2nd opposite parties filed proof affidavit. Exts.B1 to B5 marked form the side of the 1st opposite party and Ext.B6 from the side of the 2nd opposite party. Exts.B2 and B3 are objected on the ground that there are unaccompanied by Section 65B certification. The objection is overruled as we are not bound by the strict rules of Evidence of Act. Ext.B2 is further objected on the ground that the communication was not received by them and no date is mentioned in it. Ext.B3, photograph is objected on the ground that there is nothing to show that it relates to complainant's device. Ext.B5 warranty conditions are objected on the ground that it is entirely different from the warranty of complainant's device.

Complainant filed an application to cross examine the witness of the 1st opposite party and it was allowed. But the witness did not appear for cross examination. Evidence of the 1st opposite party was closed with an observation that any adverse inference can be availed against the 1st opposite party. Both complainant and opposite parties filed notes of argument.

7. **Point Nos.1 and 2 are considered together**

The complainant purchased an Apple I-Phone 13 Pro 256 GB on 29.04.2022 which is manufactured by the 1st opposite party for an amount of Rs.95,000/- . After using it for few months, the phone developed problems like unusual battery draining and its receiver speaker was not working. Later, on 13.12.2022, the device started showing yellow shaded screen and nothing was visible in the display. So, he entrusted the phone with the 2nd opposite party, who is the authorised dealer of the 1st opposite party for repair.



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8. In order to prove his case, the complainant produced six documents. Ext.A1 is the invoice dated 29.04.2022 showing the purchase of the phone. (Eventhough the marking of this is objected, it is overruled as it is the invoice is issued by the dealer and the opposite parties has no case that the complainant did not purchase the product manufactured by the 1st opposite party). Ext.A2 is the Repair Acceptance Form dated 15.12.2022 issued by 'I Care', the Authorised Service Provider. Ext.A3 is the copy of e-mail dated 15.12.2022 stating that the device has been sent to Apple Repair Centre for further diagnosis. Ext.A4 is the copy of the e-mail sent by them dated 26.12.2022 stating that the device is ready for delivery and requesting the complainant to pick it up from their centre. The diagnosis part of Ext.A4 details the repair/service done by them. For easy reference it is copied "customer reported I-phone having black display also mentioned the receiver speaker issue, battery draining. Checked and found the same. Did hard reset, no go Restored I-phone to latest iOS using apple configurator, failed multiple times. Could not did hard reset. Tried restoring I-phone to latest iOS using apple configurator since I-phone display showing black only. Ran SNR test passed. Ran Integrated current checker test showed as device stuck at restore mode. Checked physical condition, no anomalies found. Liquid contact indicators not triggered. Hence, as per apple service guidelines iphone need to be sent to Apple repair centre for further diagnosis. Post screening from Apple device have been requoted and device returning back to customers". Ext.A5 is the same as Exts.A4 and Ext.A6 is an e-mail communication dated 28.12.2022 from the customer care support of the 1st opposite party.
9. The opposite party's contention is that the damage caused to the complainant's phone is accidental damage and it is not covered under warranty and they have intimated this to the complainant; but he was not ready to go for it and insisted on free service. The complainant denied it and stated that there was no communication with regard to the out of warranty service.



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10. The 1st opposite party produced Ext.B2 communication from Apple Care Service to the complainant stating about the out of warranty repair. Marking of Ext.B2 was objected on the ground that the complainant did not receive any communication like that and no date is mentioned in that. Ext.B3 is the photographs. According to the opposite party, it is the photograph of complainant's mobile phone showing accidental damage and existence of foreign material. Marking of this document is objected as there is nothing to show that it relates to complainant's device.
11. Since the opposite party had raised the contention that the complainant's phone suffers from accidental damage to the enclosure grill and internal barometer, the burden is on them to prove it by way of expert evidence. But the opposite party failed to adduce any evidence. Since the defect occurred within eight months of its purchase, the complainant is entitled to get it repaired free of cost. Further, in Ext.A4, the observations detailed under 'Diagnosis' shows that the phone's physical condition was perfect. No liquid content is found and they confirmed the complainant's allegation of black display to be correct. So, if any defect other than the internal defect is found during diagnosis, as claimed by the opposite party, it is their duty to prove and they failed in proving it, point Nos.1 and 2 are found accordingly.
12. **Point Nos.3 and 4**
From the above discuss, it is found that the opposite parties failed to repair the phone under warranty and it is a deficiency in service on their part. The complainant purchased the I-phone manufactured by the 1st opposite party by spending huge amount only believing their brand name and since the opposite parties failed to provide proper customer care support, they are bound to compensate
13. **Point Nos.5 and 6**
The complainant is entitled to the following reliefs;



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1. The opposite parties are directed to repair the complainant's I phone to his satisfaction or in the alternative refund Rs.95,000/-, the cost of the phone to the complainant together with interest at 10% from 15.02.2023 till realisation.
2. To pay Rs.30,000/- towards their deficiency in service and Rs.20,000/- as compensation for the mental agony suffered and Rs.10,000/- as cost of the litigation.

The above amounts are to be paid within 45 days of receipt of this order, failing which the opposite parties are liable to give Rs.500/- as solatium per month or part thereof, from the date of the order, till the date of payment.

Pronounced in open court on this the 13th day of August, 2024.

Sd/-

VINAY MENON .V, PRESIDENT

Sd/-

VIDYA A., MEMBER.

APPENDIX

Documents marked from the side of the complainant:

- Ext.A1: Retail Invoice of the device dated 29.04.2022.
- Ext.A2: Repair acceptance from issued by the 2nd opposite party to the complainant dated 15.12.2022.
- Ext.A3: E-mail communication from the 2nd opposite party to the complainant dated 15.12.2022.
- Ext.A4: E-mail communication from the 2nd opposite party to the complainant dated 26.12.2022.
- Ext.A5: E-mail communication from the 1st opposite party to the complainant dated 03.02.2023.
- Ext.A6: E-mail communication from the 1st opposite party to the complainant dated 28.12.2022.

Document marked from the side of Opposite party:

- Ext.B1 and B2 (series): The copy of the product service summary and photographs of the I-phone showing accidental damage.
- Ext.B3: The copy of the Service Report dated 26.12.2022.
- Ext.B4: The copy of the Apple terms of warranty.
- Ext.B5: Copy of the Apple One year Limited warranty.
- Ext.B6: True copy of RAF.

Witness examined on the side of the complainant: Nil

Witness examined on the side of the opposite party: Nil



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Court witness: Nil

Cost : 10,000/-

NB: Parties are directed to take back all extra set of documents submitted in the proceedings in accordance with Regulation 20(5) of the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 failing which they will be weeded out.

Fair copy on: 19.09.2024

Dispatched on: 24.9.24 (by hand)

Forwarded/By Order,

Assistant Registrar,

Assistant Registrar
Consumer Disputes Redressal Commission,
Palakkad, Kerala State



Free certified copy

Serial No. of the Application. _____

Date of receipt of Application _____

Name of the applicant _____

Date of dispute 13/8/24 _____

Date of Pre _____

Date of dispatch of free certified copy of or _____

By Hand 24.9.24 _____

By Post _____