

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA**

**Consumer Complaint No.: 06/2018
Date of Presentation: 17.05.2018
Order Reserved on: 02.07.2024
Date of Order: 18.07.2024**

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**Amit Rana S/o Sh. Om Prakash, resident of Ward No.8,
Post Office Tiara, Tehsil and District Kangra, H.P.**

..... Complainant

Versus

- 1. Toyota Kirloskar Motor Pvt. Limited, Plot No.1, Bidadi Industrial Area, Bidadi, Ramnagar District PIN 582109 Karanataka (India) through its General Manager.**
- 2. Anand Toyota, Mandi Lunapani, near Nagchala, Post Office Bhangrotu, Tehsil Sadar, District Mandi, H.P. through its Manager.**

.....Opposite Parties.

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Coram

**Hon'ble Justice Inder Singh Mehta, President
Hon'ble Mr. R.K. Verma, Member.**

Whether approved for reporting?¹ Yes

¹ Whether reporters of the local papers may be allowed to see the order?

**For Complainant: Mr. Ravinder Singh Chandel,
Advocate**

**For Opposite Party No.1: Mr. Manoj Sharma, Advocate vice
Mr. Peeyush Verma, Advocate.**

For Opposite Party No.2: Already ex-parte.

Justice Inder Singh Mehta, President

ORDER

The complainant has filed the instant complaint seeking directions to the opposite parties to pay total sale price of the vehicle and other expenses amounting to Rs.40,56,500/-, a sum of Rs.3,01,477/- incurred for registration of vehicle, insurance and choice number, a sum of Rs.2,00,000/- as compensation for mental agony, Rs.1,00,000/- as litigation costs and in alternative to replace the vehicle with new one.

Brief facts of Case:

2. Brief facts stated are that the complainant purchased vehicle FORTUNER SIGMA -4 PACKAGE 2.8L 6AT from the opposite party No.2/Anand Toyota for a sum of

Rs.34,13,400/-. The complainant also paid a sum of Rs.93,023/- as value of the accessories of the car and Rs.1,16,477/- as insurance premium. At the time of delivery of the car, the complainant has spent total sum of Rs.36,22,900/-. The opposite party No.2/dealer gave the delivery of the vehicle on 11.08.2017 at about 6:00 PM. When the car was plied on the road upto the distance of 30 Kms. from the agency, it started giving indication on the instrument affixed on the front portion dash board of the car to the effect "2WD -4WD mode change malfunction visit your dealer. On the next day, the complainant telephonically informed the dealer/opposite party No.2 regarding indications being given in the instrument of the car. The opposite party No.2/dealer advised the complainant to get the vehicle checked in the workshop of "Silvermoon Toyota" District Kangra. As per the advice of the opposite party No.2/dealer, the complainant on 21.08.2017, got his vehicle mechanically checked from the said authorized agency of the opposite

parties. However, the said agency could not rectify the defect, but reported that Mal function light checked and found OK. After the persistent request of the complainant, on 05.02.2018 some mechanics from the showroom of opposite party No.2/Dealer visited the house of the complainant and they took the vehicle to workshop of opposite party No.2 for removing the defect. On 12th day of February, 2018, the complainant was called by the opposite party No.2/dealer to its showroom at Mandi and there the opposite party No.2/dealer gave in writing that **“Transfer actuator sometime not working properly, transfer actuator need replace, Part not available in store and ordered.”** Thereafter, opposite party No.2/dealer replaced the actuator under warranty. However, when the vehicle was brought back, the same problem remained in the vehicle and the said problem could not be resolved by the opposite parties even after running the mileage of 20,959 Kms. The opposite party No.2 in connivance with the opposite party

No.1/Manufacturer has sold defective vehicle to the complainant. The opposite parties could not remove the defect in the vehicle and as such, there is deficiency in service on the part of the opposite parties. Hence, the present complaint.

3. The complaint is contested by the opposite party No.1/Manufacture by filing reply wherein the opposite party No.1 has taken preliminary objections of cause of action, complainant has not come to this Commission with clean hands and suppressed the material facts, complaint is bad for mis-joinder of parties and the complainant is estopped from filing the present complaint on account of his own acts, deed, conduct and acquiescence.

On merits, the opposite party No.1/manufacturer has denied that vehicle sold to the complainant was defective vehicle. The complainant has been mishandling the vehicle in question and has failed to adhere to the do's and don't's regarding usage of vehicle, which has resulted fault in the

transfer actuator. There is nothing on record to show that vehicle in question suffers from any inherent manufacturing defect. The ACTUATOR ASSY TRANSFER SHIFT was infact replaced under warranty. Mere replacement of ACTUATOR ASSY TRANSFER SHIFT of the vehicle does not entitle the complainant for replacement of vehicle as a whole. The vehicle in question was not being driven as per the instructions. There is no deficiency in service on the part of the opposite party No.1/Manufacturer. Hence a prayer for dismissal of complaint was made.

4. None appeared on behalf of the opposite party No.2/dealer Anand Toyota despite service. Hence, the opposite party No.2/dealer was proceeded ex-parte vide order dated 09.07.2018.

5. Rejoinder denying the contents of the reply filed by the opposite party No.1/Manufacturer and reiterating those of the complaint has been filed.

6. Thereafter, the parties adduced evidence in support of their respective pleadings. The complainant has tendered in evidence his affidavit Ext. C-1 as well as affidavit of one Rakesh Kumar as Ext. C-2.

7. The opposite party No.1/manufacturer has tendered in evidence affidavit Ext. OP-1 of Deepak Rao, Company Secretary & Manager Legal.

8. We have heard the learned counsel for the parties and have gone through the case file carefully.

9. Learned counsel of the complainant has submitted that on 01.08.2017 the complainant has purchased the vehicle (Fortuner) from opposite party No.2 for a sum of Rs.34,13,400/-. He further submitted that after purchase of the vehicle when they covered a distance of 30 to 40 kms, it started giving defect by indicating "2WD- 4WD mode on the dash board. Intimation of this defect was given to opposite party No.2. He further submitted that employee of the

opposite party No.2 inspected the vehicle in question and found defect in it. He further submitted that the said employee could not rectify the defect. Thereafter, on the advise of opposite party No.2, the vehicle was taken to the workshop but opposite party No.2 could not remove the defect and thereafter complainant took the vehicle to his house. He further submitted that despite repeated requests by the complainant, the defect could not be removed and the vehicle is still in defective mode which is evident from Annexure C-8 which shows that "transfer actuator some time not working properly transfer actuator need replace". He further submitted that the vehicle in question is in possession of the complainant. He further submitted that there is deficiency in service and unfair trade practice on the part of the opposite parties and prays that complaint of the complainant be allowed.

10. On the other hand, learned counsel of the opposite party No.1/Manufacturer has submitted that there is

no proof on record that the vehicle in question suffers from any manufacturing defect. He further submitted that it is the responsibility of the opposite party No.2/dealer to remove the defect but the opposite party No.2/dealer is ex-parte in this case. He further submitted that the complaint is devoid of any merit and same be dismissed. He has also relied upon the order of Hon'ble National Commission in case titled Md. Hassan Khalid Haidar Vs. General Motors India Pvt. Ltd. & Ors. dated 08.06.2018 and order of this Commission in case titled The Ashok Leyland Company & Ors. Vs. Shri Lok Ram & Ors. Latest HLJ 2024 (HP) 131.

FINDINGS

11. The admitted fact emerging on record is that the complainant purchased vehicle FORTUNER SIGMA-4 PACKAGE 2.8L 6AT from the opposite party No.2/Anand Toyota vide invoice Annexure C-1 on 11.08.2017.

12. It is further an admitted fact that vide Annexure C-2 the complainant has paid a sum of Rs.93,023/- as value

of the accessories of the car and further a sum of Rs.1,16,477/- as insurance premium vide Annexure C-3.

13. In the instant complaint, the complainant has alleged that on the date of purchase of the vehicle i.e. 11.08.2017 after plying the vehicle only upto the distance of 30 KM from the agency, the vehicle started giving indication on the instrument affixed on the front portion dash board of the car to the effect 2WD-4WD mode change malfunction visit your dealer and getting the vehicle checked up from the opposite party No.2/Dealer many times, the said problem could not be rectified by the dealer and alleged that a vehicle having manufacturing defect was sold to the complainant.

14. Per contra, the opposite party No.1/Manufacturer has alleged that complainant has been mishandling the vehicle in question and has failed to adhere to the do's and don't's regarding usage of vehicle, which has caused fault in the transfer actuator.

15. The job card Annexure C-5 is dated 21.08.2017 which indicates that vehicle was duly checked and inspected by service centre of the opposite parties. The job card, Annexure C-5 further indicates that Mal function light checked and found OK. The job card, Annexure C-5 is duly signed by the complainant. Therefore, deposition made by Rakesh Kumar in affidavit Ext.C-2, loses its significance. Till 21.08.2017, the complainant had plied his car upto the mileage of 994 Kms.

16. Further, perusal of job sheet, Annexure C-8 dated 12.02.2018 indicates that on checking of the vehicle it was found that "Transfer actuator sometime not working properly, transfer actuator need replace, Part not available in store and ordered." Till such date, the complainant has plied the car in question upto 16,098 km.

17. Perusal of the job sheet Annexure C-9 dated 08.04.2018, also indicates that the opposite party

No.2/dealer replaced the actuator under warranty. Annexure C-9 further indicates that till 08.04.2018, the complainant has plied the car in question upto 20959 km.

18. Even the photographs of the vehicle Annexure C-10 indicate that complainant has plied his car upto 24543 Kms.

19. Thus, from the aforementioned documents, it is proved on record that the complainant has been plying his car regularly and the same is still in his possession.

20. The complainant has alleged manufacturing defect in the vehicle in question. However, the complainant has not filed any evidence in the shape of expert report or affidavit of mechanic/service engineer to show that the alleged defect in the vehicle was manufacturing defect.

21. For want of expert evidence in the shape of report or affidavit of the mechanic/service engineer, the plea of the complainant that the vehicle sold to the complainant is

having inherent manufacturing defect does not seem to be correct and loses its significance.

22. In these circumstances, no deficiency in service or unfair trade practice can be attributed to the opposite parties.

23. In view of the above discussion, we find no merit in the instant complaint. Consequently, the complaint of the complainant fails and same is hereby dismissed.

24. Parties are left to bear their own costs.

25. Certified copy of this order be sent to the parties and their counsel(s) strictly as per rules. Pending applications, if any, also disposed of. File after due completion be consigned to the Record-Room.

Justice Inder Singh Mehta
President

R.K.Verma
Member

Manoj