

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION VAZHUTHACADU
THIRUVANANTHAPURAM

PRESENT

SRI.P.V.JAYARAJAN : PRESIDENT

SMT.PREETHA G NAIR : MEMBER

SRI.VIJU.V.R : MEMBER

CC.NO.312/21 (Filed on : 22/10/2021).

ORDER DATED : 24/04/2024

COMPLAINANT

Praveen.S

S/o.Sivarajan,

Thazhakke mannadi veedu,

Thirupuram, Thiruvananthapuram – 695133

(Party in person)

VS

OPPOSITE PARTIES

1. The Manager,

Vivo, Kerala Head Office,

67, 2052, Provident Road,

Kacherippadi, Kochi – Kerala – 682026

2. The Manager,

Vivo Service Center,

Jayachandran Building, First Floor,

Kizhakkenada road, Amman kovil Junction,

Neyyattinkara, Kerala – 695121

(By Adv.Abraham.P.George)

ORDER

SRI.P.V.JAYARAJAN : PRESIDENT

1. This complaint is filed under section 35 of Consumer Protection Act 2019 and stood over to this date for consideration and this Commission passed the following order.

2. This is a complaint filed by the complainant against the opposite parties alleging deficiency in service and unfair trade practice on the part of the opposite parties. After admitting the complaint notice was issued to the opposite parties. Opposite parties 1 & 2 entered appearance and filed written version denying the allegations raised by the complainant.

3. The case of the complainant in short is that on 14/03/2021 he purchased a Vivo mobile phone from Mobile Point, Kaimanam by paying a sum of Rs. 24, 990/- (Rupees twenty four thousand nine hundred and ninety only). At the time of purchase it was informed that the mobile phone is having one year warranty. Subsequently after two months from the date of the purchase of the mobile phone some liquid spread on the display and the entire display was completely disturbed. According to the complainant there were no external damages to the mobile phone. The complainant though contacted the opposite parties they have demanded service charges for repairing product inspite of the fact that the defect was within the warranty period. Hence alleging deficiency in service and unfair trade practice on the part of the opposite parties, complainant approached this commission for redressing his grievances.

4. The opposite parties 1 & 2 filed written version denying the allegations raised by the complainant. The opposite parties admitted that the complainant had purchased a Vivo mobile phone for an amount of Rs. 24,990/- (Rupees twenty four thousand nine hundred and ninety only) from a shop namely Mobile Point. It is also admitted that the said product is having a warranty for a period of one year from the date of purchase. It is also admitted that 25/06/2021 the complainant approached the second opposite party alleging complaint of display of the mobile phone. According to the opposite parties on verification of the mobile phone, it was found that the display is broken for external physical reasons. The opposite party further contended that they have informed the complainant that the display has to be replaced and as the complaint to the mobile phone was caused on account of physical damage, the warranty conditions does not apply and that the customer has to pay the necessary charges for replacement and services. According to the opposite parties the complainant was not amenable for the same and as he demanded back the phone, it was returned with broken display and job sheet was cancelled. Hence according to the opposite parties there is no deficiency in service on the part of the opposite parties and they are not liable to pay any compensation to the complainant as claimed in the complaint. Hence the opposite parties praying for dismissal of the complaint.

5. The evidence in this case consists of PW1 and Exts.P1 to P3 from the side of the complainant. On 14/02/2023 when the case came up for consideration, the opposite party submitted that they have no oral evidence and hence there is no affidavit or documents from the side of the opposite parties.

6. Points for consideration

1. Whether there is any deficiency in service or unfair trade practice on the part of the opposite parties.

2. Whether the complainant is entitled for the relief claimed in the complaint.

3. Order as to cost

7. Heard. Perused affidavit, documents and records. Complainant and OP1 and 2 filed argument notes. In order to substantiate the case of the complainant the complainant himself sworn an affidavit as PW1 and Exts. P1 to P3 were marked from the side of the complainant. Ext. P1 is the invoice issued by Mobile Point, Kaimanam in favour of the complainant for Rs. 24,990/-(Rupees twenty four thousand nine hundred and ninety only). Ext. P2 is the delivery receipt issued by the second opposite party and P2 (a) is the manual job sheet issued by second opposite party. Ext. P3 is the copy of the aadhar card of the complainant. The purchase of the mobile from Mobile point, Kaimanam is admitted by the opposite parties. Ext. P1 proves the purchase of the Vivo mobile phone by the complainant. Ext. P1 also shows that it was financed through Bajaj Finance, Thiruvananthapuram. Ext. P2 (a) shows that the complainant is entrusted the mobile phone to second opposite party and the same was returned back as the complainant was not ready to pay the service charge to the opposite party on the ground that the product is having one year warranty. There is no affidavit or documents from the side of the opposite parties. In the argument notes filed by the opposite parties 1 & 2 there is a reference with regard to Ext.B1, which is a delivery receipt dated 25/06/2021 issued by Vivo Haijin Trade India Pvt Ltd. But no such document is seen marked from the side of opposite parties 1 & 2. But the non marking of that document will not prejudice the interest of opposite parties 1 & 2 in view of the fact that the very same document is seen produced by the complainant and marked as Ext.P2. The purchase of the mobile phone and the defect in the display of the mobile phone are admitted by the opposite parties. Main

contention raised by the opposite parties is that the complaint of the mobile phone was caused on account of physical damage. The warranty condition does not apply and that the customer has to pay the necessary charges for replacement and services. Though the defect was found within the warranty period, the opposite parties have not produced any such terms and conditions showing that if the damage to the product was caused due to the physical damage, the same will not come under the purview of one year warranty provided to the product. Mere averment in the written version cannot be accepted as evidence to substantiate the contentions of the opposite parties without any supporting evidence. It is a well settled legal proposition that the pleadings alone can't be considered as evidence in the absence of any supporting materials. As such we are not able to accept the contention of the opposite parties that the warranty is not applicable to the mobile phone purchased by the complainant as the complaint to the mobile phone was as a result of physical damage to the mobile phone. The purchase of the phone is admitted, the defect to the phone is admitted and approaching the second opposite party with the defective product by the complainant is also admitted. Hence these aspects are admitted facts. By swearing an affidavit as PW1 and marking Exts.P1 to P3 documents, we find that the complainant has succeeded in establishing his case against the opposite parties in the absence of any contra evidence from the side of the opposite parties. As such we are accepting the evidence adduced by the complainant. From the available evidence before this commission we find that there is deficiency in service on the part of the opposite parties. It is also evident that due to the act of the opposite parties, the complainant has suffered mental agony and financial loss. As the financial loss and mental agony to the complainant was caused due to deficiency in service on the part of the opposite parties, we find that the opposite parties are jointly and severally liable to compensate the loss sustained by the complainant. In view of the above discussions, we find that this is a fit case to be allowed in favour of the complainant.

In the result, the complaint is allowed. The opposite parties are hereby directed to replace the display free of cost and pay a sum of Rs. 10,000/- (Rupees ten thousand only) as compensation and Rs. 3000/- (Rupees three thousand only) as cost of this proceedings within 30 days from the date of receipt of this order. Failing which the amount except cost shall carry an interest at the rate of 9% per annum from the date of order till the date of realization.

OR

In the alternative the opposite parties 1 & 2 are directed to refund Rs. 24,990/- (Rupees twenty four thousand nine hundred and ninety only) to the complainant along with Rs.10,000/- (Rupees ten thousand only) as compensation and Rs.3000/- (Rupees three thousand only) as cost of this proceedings within 30 days from the date of receipt of this order. Failing which the amount except cost shall carry an interest at the rate of 9% per annum from the date of order till the date of realization.

A copy of this order as per the statutory requirements be forwarded to the parties free of charge and thereafter the file be consigned to the record room.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the Open Commission, this the 24th day of April 2024.

Sd/-

P.V.JAYARAJAN : PRESIDENT

Sd/-

PREETHA G NAIR : MEMBER

Sd/-

VIJU.V.R : MEMBER

Be/

INDEX

CC.NO.312/2021

List of witness for the complainant

PW1 - Praveen.S

List of Exhibits for the complainant

Ext. P1 - Copy of invoice issued by Mobile Point, Kaimanam

Ext. P2 - Copy of delivery receipt issued by the second opposite party

Ext. P2 (a) - Copy of manual job sheet issued by second opposite party.

Ext. P3 - Copy of the aadhar card of the complainant.

List of witness for the opposite parties – NIL

List of Exhibits for the opposite parties – NIL

Court Exhibits - NIL

Sd/-

PRESIDENT