

**General Manager and Another Vs. Shinob**

**General Manager and Another Vs. Shinob**

**SooperKanoon Citation :** [sooperkanoon.com/1108200](http://sooperkanoon.com/1108200)

**Court :** Kerala State Consumer Disputes Redressal Commission SCDRC  
Thiruvananthapuram

**Decided On :** Apr-26-2012

**Judge :** The Honourable Shri. Justice K.R. Udayabhanu President

**Appeal No. :** First Appeal No. A/11/802 (Arisen out of Order Dated 31/08/2011 in  
Case No. CC/06/20 of District Wayanad)

**Appellant :** General Manager and Another

**Respondent :** Shinob

**Judgement :**

JUSTICE SHRI. K.R. UDAYABHANU : PRESIDENT

The appellants are the opposite parties, the dealer and the manufacturer respectively in CC.20/06 in the file of CDRF, Wayanad. The appellants are under orders to refund a sum of Rs.75,000/- and to pay cost of Rs.3000/- with interest at 10% starting from one month after the date of receipt of the order.

2. The case of the complainant is that he purchased a RELPG-4 stroke autorikshaw for a sum of Rs.1,05,840/- with a loan of Rs.90,000/- availed from the Backward Classes Development Corporation. According to him immediately after purchase the vehicle was found having mechanical problems. The matter was reported at the Mananthavady branch of the dealer who directed the complainant to take the vehicle to the dealer at Kozhikkode. It was taken to Kozhikkode at the

expense of the complainant. Subsequently also the complainant had to take the vehicle to Kozhikkode at 3 instances. The defects would not be rectified. The vehicle was also taken to Kottackal at the service centre of the dealer. The complainant had to stay at a private lodge for 4 days. Even then the defects could not be rectified. The engine became off after a loud sound. The mechanic of the dealer directed to replace the engine. The vehicle was taken to the dealer at Kozhikkode on 13.9.2005. According to him till now the vehicle has not been returned after repairs. He is unable to repay the loan instalments. He has sought for replacement of the vehicle and also Rs.16,000/- spent for repairs with interest at 12% and also Rs.50,000/- as compensation.

3. The 1<sup>st</sup> opposite party has filed version denying the allegations. It is stated that the vehicle was brought for regular service on 3 occasions and all the complaints mentioned by the complainant were rectified. The vehicle was purchased on 8.7.2005. The warranty period is over. The last time the vehicle was brought to the opposite party was on 1.2.2005 (sic 2006). The complaint was missing while acceleration. The LPG kit was charged and gas tuning was done. At the time the vehicle had plied 9500 Kms.

4. The 2<sup>nd</sup> opposite party has filed version contending that the defects mentioned are the wear and tear of the vehicle etc. The warranty is limited to 6 months. Every complaints were rectified. It is alleged that when the financier tried to repossess the vehicle the complainant has initiated the proceedings to prevent the financier from repossessing the vehicle. The complainant had remitted only one instalment of the loan amount. The allegation of manufacturing defects is denied. The repair at Kottakkal and Kozhikkode etc are not as advised by the opposite party. The fact that the RTO has issued fitness certificate indicates that the vehicle is roadworthy. The allegations are denied.

5. The evidence adduced consisted of the testimony of PW1, CW1, OPW1 to 3, Exts.A1 to A8, Exts.B1 to B5 and Exts.C1 to C3.

6. The Forum has found that there is manufacturing defect and directed to pay a sum of Rs.75,000/- towards compensation as noted above.

7. It is the contention of the counsel for the appellants that Ext.C1 to C3 commission reports and the evidence of CW1 the expert who submitted Ext.C2 and C3 reports are totally unreliable and did not contain any details and that the evidence of the complainant cannot be relied as such as it is interested. The evidence of OPW1 the Technical Supervisor of the dealer outlet and OPW2 the Administrative Manager and OPW3 the Mechanic has to be given sufficient evidentiary value.

8. We find that the complaint has been filed on 1.3.2006 ie within 6 months of the date of purchase which is 8.7.2005. As per Ext.C2 report of the expert dated:11.8.2010 the kilometer reading is 10,692. On 17.7.2006 the kilometer reading vide Ext.B5 job card is 9500 Kms. There is no case that the odometer was tampered with. As is noted in Ext.C2 report that the vehicle is not in running condition appears true. Of course Ext.C1 to C3 reports did not contain the details of the defects except one sentence statements. In Ext.C1 dated:17.7.2006 it is mentioned that there is (1) starting trouble, (2) engine misfiring occasionally (3) abnormal sound from engine. In Ext.C2 on inspection on 6.8.2010 it is mentioned (1) the vehicle is not in good running condition. (2) the appearance of the vehicle indicates that the vehicle is not in use for a very long time. In Ext.C3 the report of inspection on 4.11.2010 the problems noted are (1) engine produced abnormal sound on acceleration (2) the engine is not able to run in LPG. (3) engine emits excessive smoke. The commissioner was examined as CW1. The commissioner is an Assistant Motor Vehicles Inspector. He has stated that the vehicle was not in a position to run in gas. He has also stated that he could not start the vehicle. He has also stated that the vehicle that can be run on LPG can run smoothly while using domestic gas also. OPW3 the Mechanic has stated that he is not aware of the difference between cooking gas and LPG with respect to use of the same for the vehicle. It is the suggestion in the cross-examination of the complainant that it was on account of the use of the cooking gas that the engine became defective. The same stands not established. Evidently so long the vehicle has run only 10692 Kms. As already noted above the vehicle was purchased on 8.7.2005. The same would establish the case of the complainant that the vehicle is not in a running condition for quite long. The fact that the complaint has been filed within 6 months itself would show that the complainant could not manage the vehicle on

account of the engine problems. The evidence would establish that the vehicle is having manufacturing defects. In the circumstances we find that no interference is called for in the order of the Forum. All the same we find that the vehicle if not in the custody of the opposite parties is to be handed over to the opposite parties and if not in the custody of the complainant, at the time of executing this order the salvage value of the vehicle is to be reduced. With the above modification the order of the Forum is sustained. The appeal is dismissed.

Office will forward the LCR along with a copy of this order to the Forum.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**