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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Jan-24-2012

Judge : Honourable Thiru Justice M. Thanikachalam President, Thiru a.K. Annamalai, M.a., M.L., M.Phil., Member (Judicial) &Amp; Thiru S. Sambandam, Member

Appeal No. : F.A.NO.454 of 2010 (Against order in C.C.NO.33/2005 on the file of the DCDRF, Vellore)

Appellant : The Manager Vst Service Station (Vellore) Gandhi Nagar

Respondent : Dr. M.N. Balaji

Judgement :

(The Respondent as Complainant filed a complaint before the District Forum against the opposite party, praying for a direction to refund the excess amount collected with 24% interest, alongwith compensation of Rs.70000/- and Rs.20000/- towards expenses incurred alongwith cost. The District Forum allowed the complaint. Against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.05.04.2010 in CC.No.33/2005.

This petition coming before us for hearing finally on 09.01.2012. Upon hearing the arguments of the counsel on both sides, perusing the material papers on record, lower court records, as well as the order passed by the District Forum, this

commission made the following order:)

M. THANIKACHALAM J, PRESIDENT

1. The opposite party in CC.No.33/2005, on the file of District Forum, Vellore, dissatisfied with the order, has come before us, challenging the same, as appellant.

2. The complainant / respondent, entrusted his Mahindra Jeep, bearing Regn. No.TN20 F9438, with the opposite party, for completing tinkering, painting and all repairs, which was estimated for about Rs.35000/-, giving an undertaking, that the vehicle will be delivered after repair, within 15 days. Further the complainant has paid a sum of Rs.20000/- on 6.4.2005. The opposite party, as agreed after 15 days, when the complainant approached, failed to deliver the vehicle, and after nearly one month, demanded a sum of Rs.75000/-, which was paid by the complainant, taking delivery of the vehicle.

3. The opposite party, charged the complainant excessively, and for some items twice, totaling a sum of Rs.20000/-, which they are liable to refund, with interest. The opposite parties did not complete the work to the vehicle, though collected Rs.75000/-, and there were defects in the painting, and other works, said to have been attended by the opposite party, thereby committing deficiency in service, causing mental agony, for which the complainant, is entitled to further sum of Rs.70000/- as compensation, in addition to the expenses incurred to the tune of Rs.20000/-. Thus alleging deficiency, dissatisfaction in the work carried out by the opposite parties, the consumer complaint was filed, seeking certain reliefs.

4. The opposite party admitting the entrustment of the vehicle, for completing repair, as well as admitting payments made by the complainant, would contend that they never undertook to complete the work within 15 days, giving assurance, whereas they have promised to deliver the vehicle, as early as possible, which was carried out, will not come within the meaning of deficiency in service, that the complainant had taken delivery of the vehicle, expressing full satisfaction of the repair, claiming compensation on false grounds, that as per the detailed bill, not taxing twice, amount were collected, including the replacement of thermacoal, the

fact being removed thermacoal cannot be reused, fixing other equipments as requested by the complainant. Therefore the complainant is not entitled to any amount, much less the excess amount, since they have not collected, whereas collected the correct amount.

5. The District Forum, based upon the pleadings, affidavit supported by the documents, has recorded a finding that the opposite party has not done their job work, to the satisfaction of the complainant, and also nearly collected Rs.20000/- excessively from the complainant. In this view, a direction came to be issued, to refund a sum of Rs.20000/-, and a further sum of Rs.5000/-, alongwith cost of Rs.10000/-, as per order dt.5.4.2010, which is impugned in this appeal, on various grounds, by the opposite party.

6. The complainant, though pleaded in paragraph 7 of the complaint, which is repeated in the proof affidavit, that the opposite party nearly collected RS.20000/- excessively, which is not the prayer as seen from paragraph 13(a), fixing the amount. Unless details are given, regarding excess payment or double payment, as the case may be, it is impossible to fix the alleged excess amount. The District Forum also, without going into details about the repair bill viz. Ex.A4, reproducing the averments in the complaint, has come to the conclusion, that the opposite party had collected nearly Rs.20000/- excessively, which should not be the finding of judicial nature, and there should be a definite finding, based upon materials. As seen from paragraph 6 of the complaint, it is the case of the complainant, the opposite party had collected Rs.1375/- for fixing tape recorded tutor, whereas not fixed the tutor. Similarly, it is the case of the complainant, the opposite party collected a sum of Rs.1250/-, for providing thermacoal. It is not the case of the opposite party, no thermacoal was fixed over the top, in order to prevent the heat. As rightly submitted by the learned counsel for the appellant, once the upholstery was removed, thermacoal was removed, then it may not be possible to fit the same, and therefore new thermacoal ought to have been fixed, that cannot be said double payment. Similarly, for not fixing the tutor, there is no evidence. The complainant giving certain Serial number in the bill, described the same as excess amount. We find no specific pleadings anywhere, that for charging that amount, no work was done, or no spare parts was replaced. Therefore, the details given in

paragraph 6, cannot be taken as proof, as if the opposite parties have collected excess amount, and the same cannot be ordered to be returned.

7. It is the specific case of the complainant/ respondent, that the opposite party had promised to give the vehicle within 15 days, but caused delay. Except the ipse Dixie of the complainant, we find no agreement between the parties, for delivering the vehicle, within 15 days. However, the opposite parties have promised to deliver the vehicle as early as possible, and its failure to deliver the vehicle, cannot be taken as deficiency in service. Though a submission was made on behalf of the complainant, that the work was not satisfactory, tinkering was not done properly, painting was not done properly, etc., we find no materials. If the allegations in the complaints are true, nothing would have prevented the complainant from sending the vehicle for technical examination, by an expert, since those defects are not visible, as contemplated under Sec.13(1)(c) of the Consumer Protection Act, which he failed. Therefore, on the basis of the mere allegations, it is impossible to conclude that the opposite party has failed to repair the vehicle, to the satisfaction of the complainant, and there cannot be end to the satisfaction, even if the work is perfect, then also one can dissatisfy on his own imagination, for which we cannot help.

8. In this context, we have to see the documents relied on by the opposite party.Ex.B1 is satisfaction note, issued by the complainant, while taking delivery of the vehicle, wherein the complainant had confirmed that the vehicle has been road tested and performance is found satisfactory. In addition agreeing that the vehicle is complete in all respects, including all spare parts. Having signed the satisfaction note, it is not open to the complainant, to challenge the same, in the absence of any pleadings, such as coercion, fraud etc., for which we do not find any semblance of pleadings in the complaint. When this document is not explained/ challenged, it acts according to us, against the case of the complainant, and therefore questioning the repair work, attributing deficiency in the work, the complainant is not entitled to get any relief.

9. After taking delivery of the vehicle on 2.5.2005, the complainant had issued a notice, through his lawyer on 26.5.2005. The complainant is not an illiterate,

whereas he is an educated person, a doctor by profession, and therefore we feel, he would not have signed in Ex.B1, without understanding its implication. Even assuming that he had signed this document, in order to take delivery, when he has issued a notice, he should have challenged the same, which is not the case, as seen from Ex.A5.

10. For the notice Ex.A5, admittedly the opposite party has not issued any reply, questioning the excess amount, or the other defects, on the other hand they have issued reply on 8.6.2005, informing we regret very much for the inconvenience caused, kindly advise your client Dr.M.N.Balaji to being his vehicle to our workshop, for our attention with prior intimation to us. This was taken as an admission by the District Forum, unfortunately without understanding the language. When the complainant has reported certain inconvenience, as the service provider, it is the duty or the curtsy to express regret for the inconvenience if any, and that is why the opposite party had said they regret very much, for the inconvenience caused. In order to see the defects alleged, and if possible to rectify the defect, if not attended as complained, the opposite party had requested Dr.Balaji, the complainant to bring his vehicle to the workshop for their attention, with prior intimation. Therefore, if the vehicle was not repaired properly, painting, tinkering were defective, when the opposite party had requested to bring the vehicle for examination, the complainant ought to have taken the vehicle, then pointed out the repairs, if not attended, insisting them to rectify the same. If he had done so, only on failure alone, the opposite party can be taken into task, as if they have committed negligence, or deficiency in service. Admittedly as requested under Ex.A6, it is not the case of the complainant they had taken the vehicle, and therefore the opposite party had no opportunity to verify the nature of accusation, which will not amount to admission, as recorded by the District Forum, unfortunately not understanding the tenor of the letter properly. Therefore, based upon Ex.B1, as well as the non-availability of the sufficient proof, to prove the excess amount, or the other defects in the vehicle, ordering refund of the amount, or compensation, does not arise for consideration, and in this view, we conclude, the appeal is meritorious, liable to be accepted.

11. In the result, the appeal is allowed, setting aside the order of the District Forum in CC.No.33/2005 dt.5.4.2010 and the complaint is dismissed. There will be no order as to cost throughout.

Registry is directed to handover the Fixed Deposit receipt, made by way of mandatory deposit, to the appellant, duly discharged.

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