

Sophy Thomas and Others Vs. Indus Motors Co. Pvt. Ltd. Represented by Its Manager and Others

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Jul-14-2011

Judge : The Honourable Shri. Justice K.R. Udayabhanu President & the Honourable Mr. S. Chandramohan Nair Member

Appeal No. : First Appeal No. A/10/524 (Arisen out of Order Dated 15/07/2010 in Case No. CC/08/144 of District Thiruvananthapuram)& 454/2010

Appellant : Sophy Thomas and Others

Respondent : indus Motors Co. Pvt. Ltd. Represented by Its Manager and Others

Judgement :

JUSTICE SHRI. K.R. UDAYABHANU: PRESIDENT

Appeal No. 454/2010 is filed by the complainants and Appeal No. 524/2010 is filed by the first and second opposite parties dealers in CC No. 144/08 in the file of CDRF, Thiruvananthapuram. The Forum has allowed the complaint in part directing the opposite parties to return the vehicle repaired in perfect running condition without collecting costs of the replaced ECM and also to pay a sum of Rs. 10,000/- towards compensation for the delay in returning the vehicle after repair and cost of Rs. 2,000/-.

The complainants who are the wife/RC owner and her husband respectively have filed the complaint for a direction to the opposite parties to replace the vehicle with a new model car or to refund the price of the vehicle ie, Rs. 7,77,668/- with interest at 18% per annum and also to pay compensation of Rs. 10,00,000/-. It is the case of the complainants that the Maruti Suzuki SX4 ZXI car purchased by the first complainant from the first opposite party dealer is defective from the very beginning. It was having mechanical problems such as starting trouble, loss of power, transmission not smooth, very low mileage and rusting. The same were promptly reported to the opposite parties. But they have failed to rectify the defects. It is pointed out that the vehicle is having two years warranty and extended paid warranty for the 3rd year. The total price paid for the vehicle is Rs. 7,77,668/-. On 07-02-2008 the vehicle met with an accident and was taken by the first opposite party dealer for repairing on 08-02-2008 itself. Although the complainants have made repeated demands the vehicle has not been delivered back. Already 5 months are over. The same is causing much agony and economic loss to the complainants. The first opposite party had directed the complainants to take the vehicle back, but without curing the defects. The complainants had to spend money for taxi for their journeys. It is alleged that the opposite parties have colluded and managed to sell the defective vehicle manufactured by the 3rd opposite party to the complainants through opposite parties 1 and 2 the dealers.

The first and second opposite parties/dealers have filed a joint version denying the allegations altogether. It is denied that the alleged defects were intimated to the opposite parties. It is pointed out that the vehicle was brought to the workshop of the first opposite party for regular free services and checkup and all the defects noted at the time were regularly repaired without any delay. It is pointed out that after the accident the complainants were not following up the matter and even after repeated requests the complainants have not given any approval for the work order for repairing the vehicle. Hence the Works Manager of the first opposite party had sent a letter dated 26-03-2008 requesting the first complainant to give approval for the work order. It is only on 15-04-2008 the first complainant give consent in writing to repair the vehicle. The allegations as to manufacturing defects are false and baseless. A team of Engineers from Maruti Suzuki had inspected the vehicle and the outcome of the inspection was communicated to the

complaint. By letter dated 14-04-2008 the first opposite party had informed the first complainant that the vehicle will be repaired after completing all the procedural formalities and receiving the necessary approval from the Insurance Company. The first opposite party had submitted all claim papers and estimate to the Insurance Company in time. But the Insurance Company had raised a doubt that in the claim form the first complainant had declared that the accident had occurred due to failure of power brake, but as per MVI report, the condition of the brake after the accident was sufficient on action. This was informed to the first complainant by the first opposite party by e-mail dated 29-05-2008 and asked her to clarify the position to the Insurance Company at the earliest. The Motor Vehicle Inspector had inspected the vehicle and issued a certificate dated 08-02-2008 that there are no mechanical defects in the vehicle at the time of inspection. The first opposite party had by letter dated 02-08-2008 informed the first complainant that the vehicle is ready for delivery and that the same may be taken at the earliest. But without taking delivery of the vehicle, the complainants raised further allegations and sent a letter dated 08-08-2008 to the first opposite party. Even though the vehicle was ready and the same was intimated to the complainants, the complainants did not take delivery of the vehicle purposefully. They wanted either to get the vehicle replaced or the price of the vehicle refunded with interest. The vehicle was repaired by the opposite parties and the complainant is liable to take delivery of the vehicle after giving the balance amount to the opposite parties after adjusting the claim amount sanctioned by the Insurance Company. The complainants are not entitled for replacement of the vehicle or for refund of the price of the vehicle. The defects were caused because of the accident committed by the second complainant. The Venjaramood Police had registered Crime No. 63/08 dated 08-02-2008 for the offences u/s 279, 337 and 338 of the IPC against the second complainant.

The 3rd opposite party/manufacturer has filed version pointing out that the first complainant has suppressed the fact that she had filed a complaint before MRTD Commission before filing the present case. It is also contended that the National Insurance Company ought to have been made a party and hence the complaint is bad for nonjoinder. It is contended that the opposite party controls over 54% of car market share in the country and is best known for following highest quality

processes in alignment with latest technology for producing the best quality cars. The vehicle purchased by the complainant is one of the best selling models. SX4 model stands head and shoulder above the rest of the other cars. It has won a few awards and accolades which are mentioned as (a) to (f) in the version. There are 36000 extremely satisfied owners since its launch in May 2007. The opposite party is an ISO certified company and is world renowned for stringent quality checks at every level of production of the vehicles. The vehicles are 100% defect free. The vehicle in question has undergone all the checks. The dealer had carried out thorough PDI (Pre Delivery Inspection) on 31-08-2007 ensuring perfect OK and road worthy condition free from defects before being sold to the complainant. After purchase the complainant had brought the vehicle for first free inspection/service on 11-10-2007 for normal routine services. The complainant did not point out any defects particularly the alleged defects at the time of said service. Normal regular/routine services were carried out by the dealer. The complainant again brought the vehicle for the second free inspection/service on 01-02-2008. During the said service also the complainant did not point out any defects in the vehicle. The normal routine services as required under warranty were carried out to the satisfaction of the complainant. The allegations in the complaint is a preplanned afterthought and a result of complainants futile attempt to escape criminal liability for the accident caused on 07-02-2008 damaging public property and seriously injuring a child. There is warranty for a term of 24 months or 40000 kms whichever occurs first from the date of delivery. The accidental repairs are not covered under warranty and the complainant has to get the vehicle repaired at his own expenses or under insurance. The cause of accident as per the report of the police in Crime No. 63/08 is that the complainant was driving badly at very high speed and the vehicle went out of control resulting in an accident. The same has been corroborated by the technical report of experts of the opposite party that the vehicle was free from any defects and also from the report of inspection of the motor vehicle involved in the accident dated 08-02-2008 by the authorities. The complainant has been deliberately not collecting the vehicle after repairs and making frivolous allegations.

The evidence adduced consisted of the testimony of PW1, DW1, DW2, CW1, Exts. P1 to P36, D1 to D19 and C1.

The Forum has held that the allegation that the vehicle was having manufacturing defects stands not established. The Forum has held that there were delay in completing the repairs and that the vehicle has been made ready only after a lapse of around 6 months and hence directed the opposite parties to pay a compensation of Rs. 10,000/- for the delay and returning the vehicle after repairs. The Forum has also held that there is no evidence to establish that the ECM was defective prior to the accident.

The case was conducted before the Forum and before this Commission by the second complainant in person on behalf of the complainants.

The second complainant has filed proof affidavit on behalf of the complainants and was cross examined by the Counsel for opposite parties 1 and 2 dealers and Counsel for the 3rd opposite party/manufacturer. In the proof affidavit it is alleged that the new vehicle delivered on 06-09-2007 was a defective one with rusted dicky and scratched dash box and that the opposite parties collected the price of a new car. It was having the defects of rusting, starting trouble, loss of power, transmission not smooth and very low mileage. According to him the complaints were registered by e-mail with the Maruti website and also intimated at the toll free telephone number and mobile number of the opposite parties. The name of the employee who registered the complaint was Mrs. Sweta Sharma. The vehicle developed complete loss of power once when reached Haripad on the way from Thiruvananthapuram and consequently the power steering and power brake failed and the vehicle lost control. As there was a divider in that part of the NH 47 and all the traffic were moving in the same direction, there was no threat from the opposite direction and so he restarted the vehicle which was on the move and the vehicle regained power and control and hence he could avoid an accident. This was promptly reported to Maruti by toll free Telephone No. 1800 1800 180 and mobile No. 09910202020. Mrs. Haripriya, Customer Relation Manger, Indus Motors were also informed. Thereafter, the Indus/dealers recalled the vehicle for service to avoid breakdowns. It was serviced on February 1, 2008 at 3145 kms which was around two months ahead of the scheduled service on the 6 month from first service or 5000 kms. It is stated that on 07-02-2008 on way from Pathanapuram to Thiruvananthapuram, a sound from inside the bonnet was heard

when reached near Vembayam and immediately the car developed loss of power, jamming of the power steering and failure of power break resulting in total loss of control causing injury to a child and then hit on an electric post. The vehicle was running at around 40-45 kms per hour at that time. He tried his best to save the life of the public and damage to public property. In the process of manoeuvring the steering to halt, the vehicle had caused injury to him and he became unconscious and the electric post fell on the vehicle. He was treated at GokulamMedical College Hospital. According to him the dealer sent people to GokulamMedical College and threatened him and he was discharged against medical advice. He had a Maruti insurance cover for the vehicle. It was the dealer who arranged spot survey. The spot survey had revealed that the accident was on account of the defects of the vehicle. It is alleged that the police and the AMVI refused to give copies of their reports to him. At last he had to resort to the provisions of the Right to Information Act to obtain the copies of the documents from the Police Station. The Indus breakdown team had inspected the vehicle at the premises of Venjaramoodu Police Station on 08-02-2008 and it was found that the engine was not working, steering was jammed and brake was not working and that the vehicle was a total loss and that the headlights and indicators are only working. The vehicle was towed away by the dealer but they refused to issue any receipt in this regard. It is also alleged that the employees of the opposite parties visited his residence and threatened him. Mr. Guru Prasad an employee of the Maruti had visited him and promised to take the finding of the survey to the Marutis Regional Office in Cochin, but there was no follow up. He had addressed the MD and CEO of Maruti Suzuki. He was advised by e-mail that a request for a new vehicle cannot be considered. A notice for legal action was served to the manufacturer but no reply received. As to the credentials of the AMVI on application under the Right to Information Act it was revealed that Mr. S.R. Suku AMVI did not possess degree in automobile engineering and that he only worked as a diesel mechanic for a monthly salary of Rs. 2,700/-. It is alleged that the AMVI lacked competency in inspecting the advanced technology vehicle such as SX4. In spite of regular follow up the dealer failed in their promise to deliver the vehicle on 31-03-2008. The Customer Care Manager told that the delay was on account of non availability of critical components and roof. The Indus/dealer served legal notice dated 08-04-

2008 threatening initiation of proceedings and demanding demurrage at Rs. 250/- per day for keeping the vehicle in their workshop. They did not permit the National Insurance Company to carry out the survey of the car between the period of Feb 2008 and April 2008. Test drive of the repaired vehicle was carried out on 02-08-2008 and 12-08-2008 respectively. It was found that many defects still persisted. The dealers also demanded payment of Rs. 62,000/- for repairing works. But refused to give a signed and stamped invoice of the same. It is stated that the expert Commissioner has extensively mentioned in the commission report the defects of the vehicle and that the complainant was not given an opportunity for selection of the vehicle and that there was no choice of similar vehicle with the dealer at the time of purchase. The affidavit contains details of the report of the Commissioner extracted. It is alleged that the opposite parties have indulged in unfair trade practice.

DW1, The Manager of the 1st opposite party has testified that at the time of the 1st service done on 11/10/2007 at the odometer reading of 1139 Kms vide job card No.0004925 the complaints sought to be rectified are the rear number plate, Drattling noise and running board cleaning. At the time of 2nd service on 1/2/2008 also no complaints with respect to the functioning of the engine was made by the complainant. He has also relied on Ext.D3 AMVI report wherein the brake system and power steering was found efficient. He has assailed the report of the expert commissioner and stated that a detailed objection to the commission report was filed. It is pointed out that even the commissioner has noted that the engine condition was found good. It is pointed out that the commissioner has also observed that the effect of long drive and fatigue of the driver might have counter effected his effort to control the vehicle during the course of the accident. It is stressed that there is nothing to show that the accident was caused on account of the alleged defects of the vehicle. According to him in Ext.D1 pre delivery inspection report, the concerned mechanics have omitted to scor off the name of the parts written as TVS made alternator and denso-made starter motor. There is no significance to the items written in Ext.D1 by the staff of the 1st opposite party.

DW2, the Area Service Manager of the 3rd opposite party/manufacture who is an Engineer has also testified that there is nothing to show that the accident was

caused on account of the alleged manufacturing defects. He has stated that the technical report of the expert manufacturer who examined the vehicle after the accident has confirmed that there was no mechanical defect that caused the accident. He has also relied on the report of the AMVI. He has emphatically denied that it was the defect of the ECM that caused the accident. He has also stated that the name of the parts written in Ext.D1, PDI report is a clerical mistake. He has explained that ECM and need for replacement of wiring harness was not mentioned in the work order. In the work order, only the items that would be covered by the insurance policy were mentioned. He has stated in the cross-examination that if the ECM is defective, the vehicle cannot be started. He has agreed to the suggestion that if the alternator motor is defective it would result in failure of converting mechanical energy into electrical energy. He has stated that it was not the case with respect to the vehicle herein. The steering wheel assembly was changed as the air bag was fixed inside the steering wheel and as the air bag was ejected, it will have to be replaced.

CW1, the commissioner vide Ext.C1 report of inspection of the vehicle done on 14/11/2008 and 3/12/2008 after repairs effected to the vehicle has reported as to the condition of the vehicle after repairs and also has observed with respect to the cause of the accident acknowledging that the limitation to his report is the fact that the inspection was done after a long period after the accident which took place on 7/2/2008. He has found that the ECM was replaced and the error code from the old ECM could not be retrieved. He has also mentioned that the incident (sic accident) cannot be treated as a result of negligent driving. He has further noted that considering the time of the accident ie at 3.45.pm, the effect of long drive, the fatigue of the driver might have counter effected his effort to control the vehicle during the course of the accident. The commissioner has also observed that the petitioner had complained that he had experienced engine stalling/engine switch off during the first month of the purchase of the vehicle and that he managed to switch on immediately and the same happened before the first service and that the same was communicated to the customer care manager of the 1st opposite party. He has relied on the recorded call with the customer care manager played before him by the complainant. He has also noted that in the report of the spot surveyor made on 7/2/08 the pre accident condition of the vehicle is mentioned as OK. In

the AMVI report also dated:8/2/2008 it is mentioned that the foot brake and hand brake were efficient. The odometer reading at the time of the accident is mentioned as 3376 Kms. He also observed that the over all engine performance was found good ie after repairs. He examined the old ECM and could not find any error codes recorded. After repairs the steering, brakes clutch etc were found good. He has also mentioned that in case of the power assisted brakes, if the power assistance is lost due to a stalled engine or other failures the system can be fully operational on reserve power. The vehicle can be brought to rest by presenting the brake pedal once. Even without the reserve power, the vehicle can be stopped by pressing the brake pedal harder than normally required. He has also mentioned that if the engine is stopped still the vehicle can be steered but with only a greater force. The power steering effect reduces at higher speed and increases at lower speed to achieve better vehicle stability. The electronic control module ECM is the heart of the system which receives the signals from sensors and processes these signals to give commands for the actuators to perform a specific task. The failure of any components in the system will be recorded as an error code in the ECM. This error code can be retrieved from the ECM by using on board diagnosing (OBD) tool to locate failure of the corresponding components. For example if air bag is deployed in an accident it will be recorded in the ECM. But the commissioner when examined as CW1 has admitted at page 8 of his deposition that the above observation is incorrect and that the deployment of the air bag will not be recorded in the ECM. He has also observed that in the event of power brake or power steering failure, it requires relatively higher force to control the vehicle as the vehicle is comparatively heavier one having a gross weight of 1650 Kg. Safety measures like ABS, air bags etc are incorporated in the vehicle. On emergency stopping hand brake can also to be used. He has also observed that the old air bag controlling assembly unit was found to have burning marks on its terminals. According to him during the course of accident the ECM hardly gets damaged. If at all any of the associated parts were damaged it might have generated some error codes. According to him the expert of the manufacturers have stated that the ECM got damaged because of the short circuit in air bag controlling assembly during the accident. But he has disagreed with the above suggestion. As according to him if the ECM was totally damaged, the vehicle

cannot be started and at least one error date would have been recorded if they were able to start the engine because of the deployment of the air bag. He has also stated that the old ECM when connected to the vehicle during the 2nd inspection the vehicle could not be started. The Commissioner has observed that the ECM of the vehicle which had shown a symptom of failure, once right before the first service and its ultimate failure was the major factor which caused to the accident of the vehicle. He has also observed that the insurance surveyor might have noticed the same and hence the insurance claim was not awarded to these parts, ie, the ECM and air bag assembly. He has also observed that an over heated engine due to lack of cooling, lubrication or faulty ignition system can mainly attribute to an engine cease.

In the objection filed by the 1st opposite party/dealer to the commission report it is alleged that the commissioner has made observations with respect to the matters which are not referred to him as per the application filed to appoint the Commissioner. It is pointed out that there is no sanctity to the audio recording and the same has not been proved. It is alleged that the Commissioner has supported the case of the complainant in the absence of any material to support the same. The engine switch off during driving as alleged was never been reported to the opposite parties. If there was any such problem in the engine system, the Mal Function Lamp glows continuously or it glows intermittently. No such complaints were ever reported before the accident. There is no possibility of loss of control of the vehicle. Being a power steering (electrical) vehicle as soon as the engine gets off automatically the steering also gets cuts off from power steering and manual steering only works and hence there is no case of any loss of control. It is pointed out that even after the accident, the vehicle was in a startable condition and it was also in a drivable condition. No mal function lamp except air bag was glowing to show any defect to any other system of the vehicle. The absence of error codes in the ECM indicates that there was no defect to any parts of the vehicle at the time of the accident. The observation of the Commissioner that the ECM had showed symptoms of failure before the first free service and its ultimate failure was the major cause that led to the accident is only a presumption without any evidence. The ECM was replaced because due to the accident there may be some impact on the ECM and because of that some severe damages may be caused to it.

Being an electronic equipment failure can happen at any time and so after some weeks the vehicle after repair could not be started and so the ECM was replaced .

The 3rd opposite party/manufacturer has also filed an objection to the report of the Commissioner. It is pointed out that the findings of the commissioner are totally contrary to the report of the AMVI. It is pointed out that the observation of the Commissioner that the complainant was not given an opportunity for the selection of the vehicle etc is not based on any valid materials. It is pointed out that the observation of the Commissioner on the basis of the alleged voice recordings cannot be relied without assessing the genuineness of the above voice recordings. Bias in favour of the complainant on the part of the expert Commissioner is also alleged. The Commissioner has even reported that none of the demanded repairs by the complainant were recorded in the job card which goes to show that he was under the influence of the complainant. It is also pointed out that the ECM will not record any error code. It is pointed out that the ECM will not show the details of the components properly functioning. In case of error to components then only the said matter is indicated in ECM. With the help of ECM, proper diagnosis to the said defective component can be carried out. It is also asserted that the deployment of the air bag will not be recorded in the ECM. It is pointed out that after approval of the work order by the complainant and the insurance company when the works commenced, the vehicle could not be started. Consequently, complete wiring harness was changed. Even then the vehicle could not be started. As per the work record of the workshop no signal was found the ECM and no diagnostic trouble code (DTC) codes found. Hence the ECM was replaced by the dealer. It was as a good will gesture that the ECM and air brake assembly replacement was not charged.

CW1, the commissioner has also stated that the abnormal functioning of the component will be shown by the ECM by a warning lamp. He has admitted that he has not noted any defect to the software in the ECM in which case the error code will not be recorded. He has also stated that after the battery connection is disconnected the ECM will not work. He has admitted that it was a mistake that has been mentioned in his report that the deployment of the air bag will be recorded in the ECM. He has stated in the cross-examination that if the driver

ignores the signals generated by the ECM the engine will be stopped or the same may result in mal functioning of the components or the engine can be damaged. He has admitted that in SX4 vehicle of Maruthi, the power steering, ABS and air bags are not controlled by ECM. He has also admitted that the vehicle can be controlled even if the engine is off and even if the power steering is not functioning but with great effort and if the driver is very conscious. He has stated that he has learnt that the accident has taken place in a turning when the engine got off. He has admitted that even without driving the vehicle the AMVI can ascertain as to the efficiency of the functioning of the brake system. He has stated it was the complainant who told him that earlier also the engine had ceased to function. According to him in the spot survey also the same is mentioned. He has stated that it was also because of the fact that the cost of ECM was not claimed in the insurance claim by the opposite parties that he concluded that the ECM was defective. He has stated that he has mentioned at para 4.3 of Ext.C1 as to the condition when the absolute control of the vehicle will be lost (it is not mentioned). On the contrary what has been mentioned is that the vehicle can be controlled and stopped by pressing the brake pedal once and harder than normally required. He has also stated that he is not an expert to examine the hardware of the ECM. According to him only on examination of the hardware the reason for the defect of the ECM can be found out. It has also brought out that the engine of the vehicle is reasonably good. He has also stated that the ECM affixed at present is of good condition.

As contended by the counsel for the opposite parties it appears that CW1, the Commissioner is somewhat biased in favour of the complainant for the following reasons. The statement that complaints with respect to the vehicle mentioned by the complainant at the time of free service were not recorded in the job card is inappropriate as he has no direct knowledge. It is also his observation that the engine has ceased to function while running earlier also. The same is only on the basis of the statement of the complainant. His observation that the accident was caused due to the defect of the ECM stands not established. His observation that the starter motor and the alternator was defective and that the same has been noted in Ext.D1, the PDI report and that the same indicated that the vehicle had manufacturing defects also stands not established. It is also his observation that in

Ext.P9 spot survey, the surveyor has mentioned that the steering got stuck and the brake system failed before the accident. The same are not mentioned in the spot survey report. The spot surveyor in the above portion of his report has only mentioned the case of the complainant and not his observations as such. In the spot survey, the Commissioner has only noted the damages sustained to the vehicle. Further as already noted above, the surveyor has mentioned that the incident took place at a turning which is totally incorrect. The allegation of the opposite parties that the Commissioner has gone beyond the terms of reference as per the application filed by the complainant for appointment of the commissioner appears true. Of course the Commissioner is a Senior grade Lecturer, Mechanical and Automobile Engineering, in a self financed College of Engineering. As evident from the terms of reference mentioned in the application filed by the complainant it is confined to report as to the road-worthiness of the vehicle, safety measures and systems needed to meet critical emergencies as developed by engine cease etc.

As can be seen from Ext.D6 scene mahazer the accident has taken place on the extreme wrong side of the driver who was PW1, the 2nd complainant. The driver was proceeding towards the southern direction and the accident has taken place on the western side foot path. The vehicle hit a child and the child sustained compound fracture to the leg and vehicle proceeded further and hit an electric post breaking the concrete electric post which fell on the vehicle, further damaging the vehicle. The accident took place in a straight road. Ext.D8 AMVI report mentions that the brake system and steering was efficient. As per Ext.D10 final report in crime No.63/08 the complaint has been charged sheeted U/Ss.279, 337 and 338 IPC. The allegation that the AMVI who is a Government employee is not a properly qualified person stands not established. The accident has taken place after 5 months of the purchase of the same. The vehicle had run about 3148 Kms on 1/2/2008 vide Ext.D13 job card and 3376 Km at the time of accident vide Ext.P12 job card. The accident was on 7/2/2008. There is no reason as to why the complainant has not intimated the 1st opposite party service provider specifically as to the engine failure on the way. Even Ext.P4 E.mail dated:2/1/2008 sent by him to the manufacturer prior to the accident only mentions as loss of power. Stopping of the engine in the midway is not indicated by the words loss of power.

The complainant he is a research scholar and a well experienced driver. A copy of the driving licence seen in the case bundle would indicate that he has obtained driving licence in 1992 and had also license to drive the vehicle in Bahrain, a country in the Middle East. His case that he had international driving license need not be disbelieved. The evidence adduced would show that even if the engine is off, while the vehicle is on the move, the driver can very well control the vehicle and stop the same. Exts.P2, P3 Feed back cards which are nil dated also mentions only loss of power. The case of the complainant that by the words loss of power he meant stopping the engine during driving is not credible. In the light of the above evidence we find that the case of the complainant that it was on account of the manufacturing defects that the accident was caused stands not established.

As to whether the vehicle had manufacturing defects has to be ascertained excluding the aspects of the accident in the instant case. In this regard, the burden on the part of the complainant is rather onerous as the fact of the accident which was a serious one has somewhat confused the relevant factors in this regard and helped the opposite parties to a great extent to assert that till the accident there was no complaint. The factors stressed by the complainant include that the ECM was replaced although the cost of the ECM which is Rs.16,000/- according to DWs1 and 2 and about Rs.60,000/- as per the price of the ECM in the United States as downloaded from the net has not been claimed by the opposite parties. As already noted above the opposite parties have justified the replacement of ECM as a good will gesture. It is also contended that cost of the above electronic equipment will not be reimbursed by the insurance company and that the ECM defect was noted subsequent to the approval of the work order by the insurance company. It has also come out that the wiring harness costing Rs.12,000/- (DW1 at page 15) was also redone. The cost of the same has also not been claimed from the insurer. The explanation of the opposite parties in this regard we find need not be doubted as it stands not established that the accident took place on account of the failure of the ECM.

Ext.D1 PDI report dated: 31/8/2007 after the vehicle was unloaded at the delivery outlet also would not indicate that the vehicle had manufacturing defects. The mechanics had only noted therein to top up the coolant. The complainant would

not have been able to run the vehicle if the starter motor and alternator was defective from the very beginning.

Of course in Ext.P4 E.mail dated:2/1/2008 addressed to the manufacturer, the complainant had alleged rusting and scratches, starting trouble, loss of power, transmission not smooth and low mileage. Ext.P4 is dated prior to the date of accident. Ext.P2 and P3 feed back reports also mentions the above complaints. Of course the above documents bear no date. It is mentioned in the proof affidavit of the complainant as noted above that prior to the 2nd free service there was stopping of engine on the way to Haripad and he just managed to restart the engine as the vehicle traffic was one way and as there was divider on one side. According to him on informing the dealer, the 2nd service was pre-poned. The 2nd service as evident from Ext.D13 job card was done on 1/2/2008 at 3145 Kms which is 2 months ahead of the due date of 2nd service which is to be done at the 6th month or at 5000 Kms as per Ext.P28 service schedule. We find that the above statement of the complainant stands not impeached. The complainant was not cross-examined on the above part of his version in the proof affidavit. It is on the intimation of the dealer that the complainant produced the vehicle on 1/2/2008 for 2nd free service. In the evidence of DWs 1 and 2 also there is no statement disputing the case of the complainant in this regard. Further the report of the technical experts of Maruthi who inspected the vehicle immediately after the accident was not produced. Evidently, the vehicle involved herein is one of the vehicles that has been purchased some what soon after launching of the particular SX 4 XI vehicle which has been launched in May 2007 vide the version of the 3rd opposite party/manufacturer. The date of delivery of the vehicle is 6/9/2007. According to the complainant the promised mileage was 14 Kms as is mentioned in his application for appointment of an expert commissioner. The complainant has produced the brochure of the opposite parties with respect to SX 4 XI vehicle wherein the mileage in comparison to that of City Honda vehicle is mentioned as 18.1 Kmpl. The commissioner on test drive of the repaired vehicle has noted the mileage as 10.1kmpl and of a new vehicle on similar condition the average fuel consumption as 13.5 kmpl. In the objection filed to the report of the commissioner, the opposite parties have contended that as per ARAI certification the mileage is 15.1 Kms of SX 4 X1 vehicle. In the objection filed to the commission report by the

3rd opposite party/manufacture it is contended that the fuel test of the new vehicle mentioned in Ext.C1 report was of another series ie SX 4 VXI and that the complainant's vehicle is SX 4 ZXI. We find that the above explanation would not clarify the allegation of the complainant that the vehicle was having low mileage and that the publicity with respect to the mileage as evident from the brochure produced ie 18.1kmpl is evidently incorrect even if the case of the opposite parties that the mileage would depend upon the test conditions is conceded. We find that the case of the complainant that the vehicle was not having the quality promised appears true. We find that the complainant is entitled to certain amount of compensation as the vehicle had shortcomings stands established.

It is the case of the complainant that the repair of the vehicle was inordinately delayed. The Forum has also upheld the above contention. It was noted that it is after a lapse of around 6 months that it was intimated to the complainant that the vehicle is ready after repairs. It is after filing of the complaint that the opposite parties intimated per Ext.P18 letter dated:2/8/2008 that the vehicle is ready after delivery. It is pointed out that as per Ext.P12 job slip issued on taking the vehicle for repairs on the next day of the accident ie on 7/2/2008 the promised date of returning the vehicle after the execution of the repairs is 31/3/2008. The complainant has also relied on Ext.P8, the brochure issued with respect to the insurance offered by Maruti/3rd opposite party as NIC (National Insurance Company) Maruti shield. As per Ext.P8 it is offered that in case of an unfortunate event of damage to the car in an accident etc what the customer need to do is to inform a Maruti authorized dealer only and the dealer would take care of everything from picking up the damaged vehicle, intimating to the local NIC office, the arrangement of survey, repairing, managing the salvage and getting the claim settled with NIC (National Insurance Company). One of the major benefits mentioned is near cashless spot accident repairs and easy settlement of claims with virtually no follow up. Ext.P17 is a letter of the complainant to the 1st opposite party dated:25/7/2008 pointing out that the required accident report dated:8/2/2008 with the relevant particulars and duly filled application were submitted on 9/2/2008 and that in spite of repeated requests etc the vehicle has not been delivered. The complainant has also relied on ext.P16 letter dated:12/5/2008 from the insurance company to the 1st opposite party wherein the insurance company has sought

clarification from the dealer as to the delay in forwarding the estimate which is seen prepared on 12/2/2008. It is mentioned that the same is intimated only on 17/4/2008.

On the other hand, the opposite parties have alleged that the complainant was not at all co-operating and that he was insisting for the replacement of the vehicle. It is pointed out that he has alleged manufacturing defects as the cause for the accident and hence the insurance company was seeking clarification with respect to the above aspects and the above was the reason for the delay. It was also pointed out that even after repairs the complainant has not taken possession of the vehicle. We find that in Ext.D12 the complaint before MRTP commission dated:12/3/2008, the complainant had asked only for refund of the price paid to the vehicle with interest and compensation. It is pointed out that Ext.D12, the complaint before MRTP would indicate the attitude of the complainant and that he was only attempting to somehow get the vehicle replaced or get the price of the car returned. It is also pointed out that on intimation that the vehicle is ready for repairs the complainant has examined the vehicle and refused to take delivery of the same. He has examined the vehicle along with a group of 4 people on 2/8/2008 and wanted further repairs as evident from Ext.P19 letter dated:8/8/2008. He has alleged that there are further defects comprising of engine noise, rusting, ageing look, painting defects, uneven surface, engine warning signals, engine alignment problems and scratches. Again the complainant was intimated as to the completion of the repairs and again he along with another person came to the place of the 1st opposite party and took the vehicle for test drive and again reiterated that the defects noted are not cured as evident from Ext.P20 letter of the complainant dated:13/8/2008. It is pointed out that in Ext.C1 report, the Commissioner who inspected the vehicle subsequently has mentioned that the engine is in good condition and that the repairs have been completed. The attempt of the complainant is only to get back the price of the vehicle which cannot be allowed as the complainant has used the vehicle for a considerable period and it would not be appropriate to direct to refund the price or replace the vehicle. It is pointed out that in the objection filed to the commission report by the opposite parties, that vide reply sent through lawyer dated:8/4/2008 they had insisted for the consent of the complainant for effecting repairs or to take back the vehicle or

else will have to pay Rs.250/- per day as demurrage charges. We find that the above documents were not produced. But the complainant in the proof affidavit filed has admitted the receipt of such a notice. The evidence of the opposite parties in this regard is that the complainant delayed approval of the work order. It is only after much persuasion that he approved the work order is the case of the opposite parties. The contention of the opposite parties that it was on account of the attitude of the complainant conveyed to the insurer that the accident took place due to the manufacturing defects of the vehicle that the insurer delayed approval of the consent to commence work. In the proof affidavit filed by the 1st opposite party it is specifically mentioned that as per letter dated:26/3/2008 they had sought for approval of the work order from the complainant and only on 15/4/2008 the work order was approved by the complainant. We find that the complainant has not challenged the above statement of the 1st opposite party in this regard. It appears that it was the attitude of the complainant in not approving the work order that resulted in the delay in executing the repair works. Hence we find that the direction to pay a compensation of Rs.10,000/- by opposite parties 1 and 2 is liable to be set aside and we do so. Opposite parties 1 and 2 will not be entitled for claiming any additional amount for repairs as they have not produced the relevant records in this regard and for certain parts like ECM, they have not placed the claim before the insurer and certain parts like ECM were admittedly replaced as good will gesture.

We find as already noted that the vehicle is not of the quality assured by the opposite parties vide brochures ie 18.1.kmpl fuel efficiency or at least 14 kmpl fuel efficiency as promised to the complainant and also had certain defects. In the circumstances we find that it would be appropriate to direct the 3rd opposite party/manufacturer to pay a compensation of Rs.2.lakhs to the complainants. The complainants will also be entitled for interest at 9% on the above amount from the date of complaint. The 3rd opposite party will make the above payments. The 1st complainant/RC owner is directed to take possession of the vehicle within 15 days of receipt of this order. The vehicle is to be kept ready in a proper running condition by opposite parties 1 and 2.

In the result A.524/10 is allowed and A.454/10 is allowed in part as above. The amounts are to be paid within 2 months from the date of receipt of this order failing which the complainant will be entitled for interest at 12% from 14/7/2011, the date of this order.

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

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