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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Sep-23-2010

Judge : The Honourable Shri. Justice K.R. Udayabhanu President & the Honourable Shri. M.K. Abdulla Sona Member

Appeal No. : Complaint Case No. CC/00/28 & OP No. 28/2000

Appellant : Joseph Joseph

Respondent : Tata Engineering, Tata Engineering and Locomotive Co. Ltd., Mumbai, Represented by Its Managing Director and Another

Judgement :

JUSTICE SHRI. K.R. UDAYABHANU PRESIDENT

The complaint is filed alleging manufacturing defects with respect to the Tata Safari 4 x 4 vehicle purchased by the complainant from the opposite parties of whom the first opposite party is the manufacturer and the second opposite party the dealer, on 27-08-1998 for Rs. 8,23,264/-, attracted by the high profile advertisements that the vehicle has got advanced technical features and warranty for 18 months irrespective of the distance covered by the vehicle. After purchase, it was noticed that the vehicle had abnormal suspension problems and had an

unusual sound from underneath the vehicle and the wear and tear of the front right wheel was quite frequent. On 10-11-1998 after covering a distance of 4000 kms the vehicle was brought to the dealer for rectifying 9 complaints. The defects were not fully rectified. On 15-02-1999 again the vehicle was brought for rectifying 12 complaints in connection with the wear and tear of the tyres and wheel alignment etc. The dealer suggested that the tyres should be changed and that there was wheel alignment problems. On 16-02-1999 after covering a distance of 8,000 km the complainant had to buy 4 new tyres from the second opposite party with a depreciation for old tyres. He had to pay an amount of Rs. 4,500/- for the tyres. The company had given guaranty for the tyres to an extend of 40000 kms. The complaints and defects again repeated. For more than 8 times within a span of 6 months from the date of purchase of the vehicle it has to be repaired. The complainant had to spent more than Rs. 25,000/- on an average for each 10000 km covered by the vehicle. The complainant has listed the major defects of the vehicle that it was having during the warranty period ie;

1. Less pick up and less pulling
2. High smoke emission
3. Frequent problems with wheel alignment settings
4. Tyre wear and tear
5. Noise from front and rear suspension
6. Abnormal sound underneath the vehicle
7. Problems with break settings
8. Complaints with power steering
9. A/C complaints etc.

It is further submitted that the complaints of the vehicle was increasing day by day and the complainant had to spent huge amounts. Clutch disc had to be replaced and pad assembly had to be changed on 08-01-2000 when the vehicle had just

covered 20000 km. The complainant had to pay an amount of Rs. 5,679/- for the same. On 05-02-2000 the complainant had again replaced the 4 tyres for which he had to purchase a set of 5 new tyres for a sum of Rs. 28,480/-. On 23-03-2000 after covering a distance of 25000 km the vehicle was again brought to the service station as there were complaints of less pulling and less pick up. The complainant had to replace the Turbo Charger for which he had to pay Rs. 25,210/-. It was also found that the vehicle was emitting a large quantity of smoke while running on the road. The smoke density was increasing at an abnormal rate. It was embarrassing for the complainant to use the vehicle as it looked like a smoke machine. Although the vehicle was entrusted a number of times at the service station the defects still persisted. The complainant was once charged with the offence of pollution and sound and had to appear before JFCM Court-II vide ST case No. 2414/2000 and was imposed with a fine of Rs. 100/-. It became impossible to sit inside the vehicle because of the rattling sound underneath the vehicle. On 01-04-2000 the vehicle was again brought to the service station for problems regarding suspension, wear and tear of tyres and high smoke emission. To rectify the defects he was issued a bill of Rs. 11094.87. It is stated that the complainant is a business man and had to travel to many places for business purposes. Although it was advised that it is an off road luxury vehicle the complainant had to spend most of his time and money in the workshop. The complainant is not using the vehicle now. The complainant has sought for getting back the price of the vehicle ie, Rs. 8,23,264/- with interest at 24% from the date of purchase ie, 27-08-1998 and a sum of Rs. 1,50,000/- the amount spent for hiring other vehicles and the cost incurred for using the vehicle involved and a sum of Rs. 20,000/- as compensation for mental agony caused and Rs. 5,000/- towards cost.

2. The first opposite party/manufacturer has contended that the warranty expired on 26-02-2000. It is contended that the complaint filed after the expiry of the warranty period is not maintainable. It is denied that the vehicle is having manufacturing defects. The first opposite party has adopted the contentions of the second opposite party.

3. The second opposite party/dealer has denied the allegations made in the complaint. It is submitted that on 08-09-1998 the vehicle was brought for carrying

out 1500 km service. He had reported no problems at the time. He had only sought for checking minor things. Subsequently on 10-11-1998 the vehicle was brought for carrying out 4000 km service. At the time also he had complained of various things which were general in nature and not of any serious defects. It is further stated that on 15-02-1999 the complainant had brought the vehicle for carrying out 8000 km service. At the time the abnormal tyre and wear was noticed and the 4 tyres were replaced and only Rs. 4,500/- was charged being the deprecation amount for the 4 tyres. The other complaints rectified and replacement of lower arm ball joint and break pads were done under warranty. The other complaints were of a minor nature. He had complained of the poor pick up only on 01-01-2000 when the vehicle was brought for carrying out 20000 km service. The two diesel filters and the front left under lower arm ball joint was replaced under warranty. He brought back the vehicle on 10-01-2000 again complaining of poor pulling. The fuel injection pump and injectors were forwarded to the dealer of MICO who checked the same and found that water had entered into the fuel injection pump head and the required repairs were carried out. As the warranty period had expired the complainant was charged for the same. It is denied that the complainant had brought the vehicle to the opposite party on 23-03-2000. It is denied that the turbo charger was replaced. On 14-01-2000 for the first time the complainant mentioned that the vehicle was emitting excess smoke. The same was checked and found that there was no defects as stated. He was advised to use good fuel since use of contaminated fuel would result in excess smoke. It is submitted that wheel alignment settings can vary slightly. It cannot be treated as a major defect. The manufacturer prescribed periodical check up of the wheel alignment. It is submitted that the complainant was using the vehicle on hilly terrain by using the 4x4 wheel drive. While doing so all the tyres get worn out fast. It is submitted that the life span of a tyre when used in 4x4 wheel drive is half of the tyre that is used without 4x4 wheel drive. The replacement of the tyre on 05-02-2000 was only on account of normal wear and tear. Whenever it was complained as to the noise from suspension the same was thoroughly checked. The 4 break pads had been replaced under warranty. On 3-05-1999 the complainant had stated that the steering was found to be tight. The idler arm was replaced and problem was rectified. Abnormal sound from underneath the vehicle

was found to be on account of lack of lubrication. On applying proper lubrication the sound problem had been rectified. Only a regular maintenance work was done to the air-conditioner. The clutch disc had to be replaced owing to the burning of the lining which would indicate that the vehicle as being driven in a rash and negligent manner by constant use of the clutch and clutch riding. Hence he was charged for replacement of the clutch disc. It is denied that pad assembly was replaced. It is denied that there was any defect with respect to the engine of the vehicle. There was no deficiency in service.

4. The complainant has filed a rejoinder reiterating that the vehicle had inherent manufacturing defects. It is pointed out that the abnormal wear and tear indicated absolutely poor calibration or maladjustment of the front tyre alignment. Usually in a heavy duty vehicle suspension would not suffer any wear and tear or out of alignment condition within a short period. The service provided was very poor. The very fact that water has going into the diesel pump itself showed that the engine and allied parts had problems and the same lead to the entry of water into the pump. It is stated that the 4x4 wheel drive mechanism was only sparingly used by the complainant. Wear and tear of the tyres could be caused only if excess load is carried or break is applied at high speed. It is denied that driving a vehicle in 4x4 wheel drive mode would cause extra wear and tear of the tyres. It is stated that the complaints of the suspension were not rectified and the breaks were not functioning properly. The resetting of the idler arm did not rectify the defect of the power steering mechanism. The clutch assembly normally would have lasted much longer. There is no rash or negligence driving of the vehicle.

5. The evidence adduced consisted of the testimony of PWs 1 and 2, DW1, Exts. A1 to A35, B1 series 11 in numbers, C1 and C1(a)

6. PW1 is the expert Commissioner who examined the vehicle and submitted Exts. C1 and C1(a) inspection reports. Ext.C1 is the first report dated 25-09-2001. In Ext.C1 the Commissioner has noted that the smoke emission was 97.3% which is much above the normal conditions. It is also mentioned that the pick up and pulling was found to be below satisfactory. It is mentioned that the same will increase if the smoke value was controlled to the optimum condition. It is also noted that the

compressor clutch is not working and a detailed inspection is required to find out the reason for the malfunctioning of the A/c compressor clutch. It is also noted that the low gear in the 4 wheel drive is not functioning. Only the high gear was found to be working. The wheel alignment was found to be out of specification. There was abnormal tyre wear on the front right tyre. The Commission has suggested that further investigation should be done by dismantling the vehicle to find out whether there was manufacturing defects. He has also noted that smoke emission and wheel alignment can change from time to time. Ext.C1(a) dated 21-03-2002 is the second report submitted by the Commisisoner/PW1 after getting the defects of the vehicle rectified at the service center ie, M/s Kalpadi Automobiles, authorized service center of Telco. It is stated in the report that after carrying out the necessary repairs the vehicle was inspected. The odo meter reading noted is 38939 kms. It is also mentioned that the speedometer cable in the gearbox end was found to be tampered (the vehicle was purchased on 27-08-1998). Hence it is after about three years and 7 months of purchase of the vehicle that the ado meter reading has been noted. The Commissioner has noted that the smoke emission test was carried out and it was found that it is within the prescribed limits of 63%. It is also noted that after the necessary adjustment on the engine the pulling of the vehicle was found to be satisfactory. It is also noted that the A/c suction hose near to the evaporator unit side was found leaking and the hose was replaced. A/c gas was charged after evacuating. A/c central grill temperature was measured and found to be 9 degree Celsius. The drive motor of the 4 wheel drive was found stuck due to water particles found inside the motor. The armature shaft and bush were found stuck due to rust. Overhauling of the motor was done and found that the 4 wheel drive is working satisfactorily. As to the wheel alignment it is mentioned that all the tyres were rethreaded tyres. It was also noted that the suspension bushes were worn out. The damaged suspension parts were replaced and alignment was checked and was found to be within the specification given by the manufacturer. The Commissioner has concluded that considering the test results after the necessary adjustments he is of the opinion that the complaints raised by the complainant were not due to manufacturing defects.

7. The complainant has filed an objection to the Commission report. It is pointed out that he had to pay a sum of Rs. 14,000/- to the service center for getting the

overhauling done as directed by the Commissioner. It is stated that the Commissioner had insisted that he would examine the vehicle only after rectifying the defects which according to the complainant is not proper. It is denied that the odometer was tampered. It is pointed out that it was M/s Kalpadi Motors who are the authorized dealers of the opposite parties that was doing the service of the vehicle for the last few months. It is alleged that the Commissioner has acted in a prejudiced manner. It is pointed out that the smoke emission done in the year 2000 showed that the smoke emission level was more than 80% even after services. It is pointed out that the complainant has already spent more than Rs. 1,24,000/- for repairing the vehicle within a short span of one year. Further he had to spend Rs. 14,000/- to repair the vehicle for the inspection of the Commissioner. It is pointed out that the 4 wheel drive mechanism was working only after the repairs. It is pointed out that it has again become defective within 2 or 3 days of repair.

8. PW1 the Commissioner has stated that at the time of replacing the clutch disk the odometer has to be replaced. He has denied the suggestion that the water particles found inside the motor of the 4 wheel drive was on account of the defect of the motor. He has stated that there was direction from the Forum to rectify the defects.

9. PW2 the complainant in the proof affidavit filed has reiterated the case set up that the vehicle had to be repeatedly taken to the authorized workshop for rectifying the defects. There were 9 complaints at the time of the first service after covering a distance of 4000 kms itself. All the tyres had to be changed on 16-02-1999 ie, within 6 months of purchase. After rectifying the number of defects on 16-02-1999 the same repeated for more than 8 times within a span of 6 months. In support of the contentions he has produced Ext.A4 wherein the 9 complaints are noted on 10-11-1998. Ext.A7 dated 16-02-1999 would show the replacement of all the tyres for which he was charged the amount for depreciation ie, Rs. 4,500/-. He has also produced Ext.A8 to A17 to prove that he had to take the vehicle a number of times to the workshop and incur expenses for purchasing of spares and repairs charges. He has also produced Ext.A18 to A20 pollution certificates. We find that as per Ext.A18 to A20 the smoke emission is within the limits. According to him he

was charged for excess smoke emission and fined. Ext.A21 is the receipt for remitting the fine of Rs. 100/- on 13-04-2000. There is nothing to show that Ext.A21 is with respect to excess smoke emission except the testimony of PW2. Ext. A22 and A23 are with respect to the repairs done at Malabar Automobiles Pvt. Ltd., another accredited service center of the opposite parties. In Ext.A22 dated 23-03-2000 is the mileage noted is 25000. Ext.A23 is the bill with respect to the purchase of spares dated 27-03-2000 from Malabar Automobiles Pvt. Ltd. The same amounts to Rs. 25210.46. It includes the cost of turbo charger assembly that costs Rs. 21,600/-. We find that it is immediately thereafter that the complaint has been filed ie, on 26-04-2000. Ext.A24 dated 05-02-2000 is with respect to the purchase of tyres for a sum of Rs. 24,480/-. According to him he had to replace the tyres for the second time. Ext.A25 is the work order dated 23-03-2000 wherein engine oil leak, turbo system leak, less break are noted. Ext.A27 dated 01-04-2000 is the one preceding the replacement of tyres. The complaints with respect to suspension, less mileage, 4x4 not working etc are noted. Ext.A28 dated 06-04-2000 is again with respect to check up to 4x4, center link and joint. Ext.A29 is the bill for purchase of spares dated 06-04-2000 for a sum of Rs. 2180/-. Ext.A30 is the repair order dated 19-04-2000 with Malabar Automobiles Pvt. Ltd. The repair cost including cost of spares work out to Rs. 3,355/-. Ext. A31 bill dated 12-04-2000 is for Rs. 8950 which included labour cost and material cost. It is stated by him that the vehicle has got inherent manufacturing defects. The 4 wheel drive mechanism was not working.

The turbo failed and A/c was faulty. Fuel injector was faulty. The suspension was faulty. The alignments of wheels were totally imperfect. The clutch suffered premature failure. Water entered the pump showing imperfect fitting of engine. Break also failed prematurely. It is contended that allegation of the tampering of the odo meter is totally baseless. The same was detached for replacing the clutch disc. In the cross examination of PW1 he has admitted that it is after 18 months of warranty period that the complaint has been filed (The complaint has been filed just 20 months after the date of purchase). It was suggested in the cross examination that there was no major complaints noted in the job cards and that 4 wheel drive will have more wear and tear than that of two wheel drive. Of course PW2 has denied the same.

10. DW1 is the Customer Support Engineer of the opposite parties. In the proof affidavit filed he has deposed in support of the averments in the version filed. In the cross examination he has admitted that an off roader vehicle like the impugned one should be capable of taking the extra pressure while operating on difficult terrains. He has stated that the driver should check the tyres periodically to inspect the alignment. If the vehicle is taken over heavy gutters or if driven in high speed or if there are pot holes in the road the same will reflect in the wheel alignment. It is alleged that regular periodical services has not been carried out. He has asserted that the odo meter was tampered as the odo meter reading was showing less kilometers in subsequent services. If the alignment of the wheels is out of order there will be abnormal wear of the tyres. According to him the complaints that was in existence could have been rectified. He has admitted that the average life of a clutch disc would be in the range of 30000 kms.

11. The Assistant Manager of the second opposite party/dealer has also filed proof affidavit in support of the averments in the version filed. He was not cross examined. He has also proved Ext.B1 series of job cards. According to him the clutch disc complaint was on account of the rash and negligence driving and constant use of the clutch and clutch riding. Ext.B1 series are the copies of the repair order forms. It also contained in detail the complaints the complainant had at the time the vehicle was brought to the service center of the second opposite party.

12. We find that the vehicle for which the complainant had paid a sum of Rs. 823,264 had to be taken to the workshop/service center frequently. All the tyres had to be replaced within a period of 6 months as evident from Ext.A7. Of course, the complainant was charged only Rs. 4500 towards depreciation of the tyres within the warranty period. But the same would indicate that the vehicle had serious problems with respect to alignment. It is pointed out that the Commissioner is the person appointed from the panel of experts submitted by the opposite parties. Whatever be the same it is seen that the vehicle has plied to a distance of 38939 kms. Although the Commissioner has mentioned that the odo meter cable was found tampered the evidence of the complainant that it might have happened at the time of replacement of the clutch disc has not been disproved as such. The

clutch disk was replaced on 08-01-2000. Ext.C1(a) report is dated 21-03-2002. It is after 2 years of purchase of the vehicle. Perhaps the vehicle has run more than the kilometer noted in Ext.C1(a) ie 38939 km. But it has to be noted that the heavy duty tyres had to be replaced within 6 months. The pump had to be repaired. The clutch disc had to be replaced. The turbo charger costing more than Rs, 20,000 had to be replaced, which all are within or just after the warranty period. The conduct of the Commissioner and the direction of the Forum to get the vehicle repaired before the Commissioner conduct the detailed inspection of the vehicle appears incomprehensible. It is possible that repair can make the vehicle appear alright for a limited period and fail thereafter. PW1 has also stated that immediately after the repair the complaints repeated. All the same, the report of the expert Commissioner cannot be brushed aside as such. All th same, it has also to be noted that PW2 the complainant when cross examined nothing was put to him to indicate that he used the vehicle in a rash and negligent manner or in a hilly terrain. The documents produced by both sides would show that the vehicle had to be taken to the workshop or service center a number of times and as already noted above the tyres had to be changed, pump repaired, turbo charger replaced and clutch disk replaced. In the circumstances, we find that it would be appropriate to direct the opposite parties to pay to the complainant a sum of Rs. 1.5 lakhs towards damages and a sum of Rs. 5,000 towards costs. The opposite parties would be liable to pay interest on the amount of compensation at the rate of 8% per annum for 2 years. The above period is fixed as it appears that the delay in disposing of the matter was not exclusively on account of the conduct of the opposite parties. The amounts are to be paid within 3 months from the date of receipt of this order failing which the complainant would be entitled for interest at 12% from today, the date of this order.

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