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Court : Goa State Consumer Disputes Redressal Commission SCDRC Panaji

Decided On : Feb-28-2014

Judge : N.a. Britto, President & the Honourable Mrs. Vidhya R. Gurav, Member

Appeal No. : C.C. No. 08 of 2013

Appellant : Anant Prabhakar Malik

Respondent : Priority Automobiles (i) Pvt. Ltd. and Another

Judgement :

N.A. Britto, President:

1. This consumer complaint filed on 26/4/13 is being disposed off by this order.
2. The facts are hardly in dispute. The complainant purchased on 6/9/11 a diesel car Laura F/L Elegance 2.0 CRDI from OP No. 1, the dealer, manufactured by OP No. 2 for a sum of Rs.16,43,086/- and registered the same under No. GA-04-C-4510. The complainant also paid a sum of Rs.98,585/- towards road tax and Rs.21,388/- towards insurance premium and renewed the policy for a further period from 7/9/12 to 6/9/13 by paying a sum of Rs.18,632/-. The car had a two year warranty.
3. The complainant is a businessman and has a petrol pump and a metal quarry situated at Chandgad in Kolhapur and travels a lot. The complainants car as on

4/9/12 had done about 35844 kms and on that day at about 9.30 a.m. when the complainant was on his way from Panaji to Sawantwadi, Complainants car suddenly stopped at Naibag, Pernem, and, no sign came on the dash board indicating the type of problem, though such a facility was otherwise available on the complainants car. All efforts to restart the car failed and therefore the complainant called the dealer, OP No. 1, who advised the complainant to call helpline and after helpline was called, the complainants car was towed to the workshop of the dealer at Taleigao. The complainant filled the job card on the same day and on the next day visited the workshop of dealer at Taleigao to know the exact fault in the car, and, it is the grievance of the complainant, that the dealer did not even bother to tell the complainant as to what was the problem with the said car.

4. The claim of the complainant is that it is only on 27/10/12 that is exactly after 56 days, the complainant received a call from the workshop of the dealer informing the complainant that the expenses of repair would amount to Rs.2.10 lacs because of adulteration of fuel and which expenses was not covered under warranty.

5. The complainant wrote a letter dated 2/11/12 to the dealer stating that he had received a call only after 56 days from the workshop of the dealer informing him about the repair expenses of about Rs.2.10 lacs. The complainant informed the dealer that he was not prepared to accept the explanation and that in case there was adulteration “ water mix “ it should have been pointed out to him immediately so that test could have been conducted and that nobody had showed him about the adulterated fuel on 5/9/12 when he had visited the workshop.

6. The dealer, OP No. 1, by letter dated 9/11/12 informed the complainant that the total cost of repairs which the complainant would have to bear would be Rs.1,18,000/- (i.e. 1,04,000/- being the cost of high pressure pump and four injectors and Rs.6000/- for consumables and Rs.8000/- as costs).

7. The complainant was also informed that 50% of the cost of parts will be borne by the Company. This letter was followed by another letter dated 14/11/12 by which the complainant was again informed that OP No. 2 had accepted the

complainants request to carry out the repairs of the car on goodwill sharing basis, 50% of the cost of parts to be replaced of the vehicle to be borne by the Company and 50% by the complainant. The total cost of parts was given as 2,01,536.56. By another letter dated 23/11/12 the complainant was informed that they were awaiting reply from the complainant to go ahead with the repairs, and, by another letter sent on or about 26/11/10, the complainant was informed that the dealer was still awaiting for a reply to their letter dated 9/11/12. The complainant was informed that the approximate estimate of repairs would be Rs.1.18 lacs plus taxes, unless further repairs were necessary. The complainant was informed to give his approval at the earliest and was further informed that they would not take responsibility towards the upkeep of the vehicle or of any of deterioration caused to the car remaining stationary for a longer period of time.

8. The complainant then sent legal notice dated 17/12/12 calling upon the OPs to repair the car free of cost as it was under warranty and hand over the possession of the same within a period of 15 days. The notice was received and was replied, by reply dated 24/1/13.

9. The OPs by application dated 29/1/14 have sought leave to produce certain documents possibly with a view to demonstrate that they were in constant touch with the complainant. The complainant was cross examined by interrogatories, and, we find that complainants assertion that the complainant was informed about the problem only after 56 days has not be controverted by the OPs either in the written version or for that matter in the letters written to the complainant. In his cross examination, the complainant stated that he was not present personally when the basic checks were carried out in the workshop of the dealer and that he was also not present when the fuel system was checked at the workshop of the dealer. The complainant reiterated that only after 56 days i.e 27/10/12 that the complainant had received a call from the dealer informing the complainant that the repair expenses would amount to Rs.2.10 lacs because of adulteration of fuel. The complainant also stated that he was not shown the photographs which was clicked by the service personnel of the dealer showing the existence of water in the fuel. Complainant stated that he had seen the said photographs for the first time on 19/6/13 which were annexed to the written version of OP No. 1, dealer.

Complainant admitted having received the emails dated 9/11/12, 14/11/12 and 16/1/13. Regarding the expense of 50% of liability, the complainant stated that he did not agree to the same because the car was under warranty. As regards the amount spent by him for hire of another vehicle, complainant stated that he spent Rs.7.3 lacs from 4/9/12 till 5/9/12 and on 6/9/13 he purchased another vehicle, namely Toyota Innova.

10. We have heard the Ir. advocates on behalf of the parties. We need not refer to the Marketing Discipline Guidelines relied upon, on behalf of the complainant, particularly, guideline No. 2.5.C and we could proceed on the assumption that the OPs are telling us the truth when they say that water was found in the fuel tank of the complainants car.

11. We have noted that complainants car is a diesel car. We have also heard petrol being adulterated with addition of kerosene or diesel but we have never heard diesel being adulterated with water. We asked Shri. Kirtani, the Ir. advocate on behalf of the OPs, as to how the water made way in the fuel tank of such a high end car but Shri. Kirtani was not able to give us any answer much less a satisfactory answer nor Ir. advocate was able to point out that the complainant was responsible for water entering the fuel tank.

12. In our view, it was for the OPs, with the technologies at their command to have explained to the Commission as to how water made way in the fuel tank of the complainants car and it only means there was some defect somewhere through which water made way in the fuel tank of the complainants car, and, for which the complainant was not at all responsible. Call it manufacturing defect or whatever. If the complainants car stopped on account of water entering the fuel tank, in our view, the liability to repair the same during warranty period, was entirely of the OPs. The OPs ought to have repaired the car and given to the complainant, free of charge, as the car was under two year warranty. The stance taken by the complainant on that score is reasonable. Under no principle known to law the complainant could have been called upon to pay 50% of the cost of the high pressure pump and the four injectors which got damaged due to the entry of the water into the fuel tank.

13. The complainant was fully justified in calling upon the OPs to repair the car free of cost as it was under warranty, as demanded by the complainant, particularly in his notice dated 17/12/12. In not doing so, the OPs have been deficient in their service.

14. The complainant is also entitled to the amount the complainant spent for hiring another car. The complainant has produced receipts for the months of October 2012 to April 2013 for having engaged another vehicle for his day to day work.

15. Complainant had purchased a high end car, and, as stated by the National Commission in the case of M/s. Hyundai Motors India Ltd., (RP No. 958/2007 decided on 29/11/2007), when a person purchases a vehicle, may be a luxury Accent car or a small car, he would not be satisfied, if it is a defective vehicle though the defect may not be a major one but a consumer loses satisfaction of having a new car and a loss of satisfaction would be much more in case when the person buys the vehicle with his hard-earned money. The National Commission also observed that unfortunately, we have developed a practice/tendency of not accepting the defects or defaults. By some measure or means, the tendency to accept the defects or defaults is required to be encouraged as otherwise, as delay in disposal of such cases would defeat the rights and the consumer gets frustrated. The Commission also observed that in other countries, defective vehicle are easily replaced and that practice is required to be adopted atleast by big companies and instead of disputing the undisputed facts the companies should resolve the matter by replacing the vehicles.

16. For reasons aforesaid, we allow the complaint, in terms of prayer (a) and direct the OPs to repair the car at their own costs and handover to the complainant within a period of 30 days, in terms of prayer (a) of the complaint with extended warranty for the replaced parts. The complainant is held entitled to a sum of Rs.7.3 lacs in terms of prayer (b) and a sum of Rs.50,000/- in terms of prayer (c) and Rs.10,000/- in terms of prayer (e). The amounts to be paid within a period of 30 days and in case they are not paid, the OPs shall pay interest at the rate of 9% till they are paid.