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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Jan-31-2014

Judge : The Honourable Mrs. a. Radha, Member, the Honourable Mr. K. Chandradas Nadar, Judicial Member &Amp; the Honourable Mrs. Santhamma Thomas, Member

Appeal No. : First Appeal No. 453 of 2012 (Arisen out of Order Dated 29/02/2012 in Case No. CC/10/306 of District Ernakulam)

Appellant : T.K. Binod

Respondent : M/S. Telco Constructions Equipment Co. Ltd. and Another

Judgement :

Smt. A. Radha : Member

On dismissal of complaint by the CDRF, Ernakulam in C.C.No.306/10 the complainant preferred this appeal.

2. It is the case of the complainant that complainant purchased œBackhoe arm? loader from 2nd opposite party on 13/06/2008 for Rs.21,97,000/- for earning his livelihood by means of self-employment. The warranty was provided to the machine for one year or 2000 operating hours. The complainant availed a loan and he had to remit @ Rs.53,500/- each towards monthly instalments. The machine had to be taken to the workshop for repairs on 30 occasions within the

warranty period. Due to recurring complaints the complainant could not generate any income by working machine and hence defaulted the repayment of the loan amount. It is stated in the complaint that the machine was repossessed by the financiers on account of non payment of loan amount and at the time of repossession the amount due to the financiers was Rs.27,15,932/-. The 2nd opposite party had collected Rs.49,626/- towards the price of spare parts used for repairing prior to the expiry of 2000 hours ie. within the warranty period. The vehicle was manufactured by the 1st opposite party. The opposite parties are jointly and severally liable for the financial loss incurred to the complainant. The complainant had to pay the loan amount with arrears and the re-payment became irregular due to the recurring defects of the machine. The complainant is entitled for a lumpsum compensation of Rs.19,50,000/- along with interest @ 15% per annum from the date of complaint.

3. The 1st opposite party contended in the version that the complainant is not a consumer and the complainant purchased the vehicle for commercial purpose. The machine purchased was commissioned on 13/06/2008 and it is admitted that the vehicle was having warranty for a period of one year or 2000 hours of operation of the machine whichever is earlier from the date of commissioning. The warranty expires on 12/06/2009. The complaint is filed in May 2010 and there is no cause of action for any complaint and it is to be dismissed. The 1st opposite party is not aware of any loan agreement between the complainant and the financiers. The periodic services were covered under warranty as provided to the machine. The problems were rectified to the satisfaction of the complainant immediately on receipt of such complaints. The warranty is subjected to the terms and conditions and the parts subjected to wear and tear are not covered under warranty and the complainant is liable to make payment for the same. The opposite party had provided service under warranty upto 26/08/2009 while the operated hours were 2696, whereas the warranty of the machine had expired as on 12/06/2009. There is no merit in the allegations made by the complainant and it is clear from the documents that the vehicle had already operated for 2354 hours within a span of 12 months. It is also stated that during the relevant period the rate for operating the loader for one hour was Rs.700/-. The total operating hours of the vehicle was 2354 and it is to be calculated that the complainant received Rs.16,47,800/- for the

hours operated. Hence the contention of financial loss by the complainant does not arise. No manufacturing defect in the machine was proved by the complainant. The normal wear and tear as well as the defects were periodically rectified to the satisfaction of the complainant and the complaint is filed for unlawful gains.

4. The 2nd opposite party filed version contending that the price of loader was Rs.20,97,100/- and the complaint lacks pecuniary jurisdiction. The complainant is not a consumer as defined U/S 2(1)(d) of the Consumer Protection Act. The complainant was using the vehicle for commercial purpose. It is also contended that the vehicle purchased on 13/06/2008 and the warranty expired on 12/06/2009. The complaint is filed in March 2010 ie. after the warranty period. It is clear from the complaint itself that the vehicle in question had already been re-possessed by the financier on account of the default of payment of loan amount. The 2nd opposite party was unnecessarily made a party to the proceedings and the complaint is liable to be dismissed for mis-jointer of party. The 2nd opposite party is not aware of the terms and conditions of the loan agreement by the complainant and his financiers. The alleged complaint regarding the vehicle was only minor complaints and the defects were rectified as and when the complainant approaches the 2nd opposite party under warranty conditions. The opposite party charged only for consumables, wear and tear items and the complainant is liable to pay the charges as per the terms of warranty. The œBackhoe arm? which had developed a crack was replaced free of cost on 03/07/2009 as a gesture of good will. There is no merit in the allegations made by the complainant that he was unable to generate any income from his loader. As per the running hours the complainant could have generated more than 16 lakhs and the allegation of financial loss is raised to suit the complaint. No manufacturing defect was proved by the complainant. If at all any manufacturing defect is alleged the complainant is at liberty to take action against the manufacturer ie., 1st opposite party only. The complainant is not entitled to any relief as the vehicle which was already re-possessed by the financiers and the complaint is filed after the repossession of the vehicle. The complainant is not a consumer on that aspect also and the complaint is only to be dismissed.

5. The complainant was examined as PW1 and Exbts.A1 to A7 were marked, on the part of opposite parties DW1 and DW2 were examined and Exbts. B1 and B2 were marked. Based on the documents and hearing the counsels the Forum Below dismissed the complaint as the complaint is not maintainable for want of ownership by the complainant at the time of filing the complaint.

6. Both the counsels for appellant and respondent argued the case in detail. It is clear from records that the vehicle was having recurring defects. The appellant had to take the vehicle 36 times to the workshop within the warranty period. Further the vehicle was using for earning his livelihood. The appellant could not generate any income and consequently the repayment was defaulted. These matters were not considered by the Forum Below. It is admitted that the vehicle was repossessed by the financiers. The vehicle purchased for Rs.21,97,000/- and had to pay with interest Rs.27,15,932/-. The complaint is filed for only Rs.19,50,000/- limiting the pecuniar jurisdiction of Forum Below. The appellant is in financial loss as the vehicle was re-possessed and he could not generate any income out of the purchase of the vehicle.

7. The counsel for the respondent submitted that the complainant is not a consumer as he does not possess the vehicle at the time of filing the complaint. He purchased the vehicle on 13/06/2008 and the financiers re-possessed the vehicle on 19/09/2009. The complaint is filed in May 2010. Now the position is that the financiers are having ownership of the vehicle for the loan amount. The financiers re-possessed the vehicle after issuing proper notice to the appellant. The complainant has come out with the complaint with unclean hands. It is also evident that the complainant admitted the repossession as well as the sale of the machine. The statement of financial loss does not arise as the machine could generate Rs.700/- per hour during that period and the running hours as on 13/07/2009 was 2354 hours. So the contention raised by the complainant that he had financial loss is made for the convenience of filing this complaint. With regard to the performance of the machine it depends upon the skill of the driver, terrain and the climate. No manufacturing defect was proved by the complainant. The machine was exclusively used for one year and the hours of working was around 2696. The counsel relied on the decision of the Honble National Commission in

the case of Anil V Pandays Case. The complainant does not have Locus Standi to file the complaint as he is not the owner of the machine at the time of filing the complaint. Hence the complaint is only to be dismissed.

8. We have to consider whether the complainant is a consumer at the time of filing the complaint. Only a consumer can file a complaint before the Forum for compensation for the deficiency in service. It is clear from the documents that the complainant purchased the vehicle availing loan from the financiers and there had default on the part of the complainant whereby on notice to the complainant the vehicle was repossessed by the financiers. The appellant availed the loan on 13/06/2008 for Rs.21,97,000/- to be repaid at the rate of Rs.53,500/- p.m. The warranty is for one year or 2000 hours. During the period of warranty the vehicle had to be taken to the service station on 30 occasions to rectify the recurring defects. There is no evidence to show that the service was not done properly during the warranty period. So also nothing is on record to prove that there is manufacturing defect to the vehicle in question. It is well settled law that it is the boundenduty of the complainant to prove the manufacturing defect on the basis of expert opinion. In this case no manufacturing defect is proved by the complainant. Hence the replacement of the vehicle or refund of the price of the vehicle does not arise. More over the recurring defects arise out of various factors such as the skill of the driver, the terrain and climate. There is no case for the complainant that the defects alleged were not attended by the respondent. It is also in evidence that the vehicle was serviced even after warranty period on 26/08/2009 though the vehicle covered 2696 hours. The warranty is limited to one year ie. 12/06/2008 or 2000 hours. So on that ground also the allegation of the complainant against the respondent will not stand. It is also admitted by the appellant that the financiers issued notice as on 19/09/2009 and repossessed the vehicle when the loan amount was due to the financiers to the tune of Rs.27,15,932/-. It is an admitted fact that the vehicle was repossessed before filing the complaint. Hence the complainant is not in possession of the vehicle at the time of filing the complaint. The Honble National Commission in Anil V Pandey Vs. National Insurance Co. Ltd.(III 2005)CPJ 21(NC) has observed the similar situation and in the light of the said decision we are of the strong view that the complainant is not a consumer and complaint is not entertainable before the Forum Below. The Forum Below rightly

observed and dismissed the complaint.

In the result, appeal is dismissed upholding the order passed by the Forum Below.

The office is directed to send a copy of this order to the Forum below along with LCR.

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