

C.C No.: 68/2021
Complaint filed on: 08.04.2021
Complaint Disposed on: 09.10.2023

**BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
COMMISSION, HASSAN - 573 201**

CONSUMER COMPLAINT NO.68/2021

DATED ON THIS THE 9th DAY OF OCTOBER 2023

- Present:** 1. HON'BLE SMT. CHANCHALA C.M, B.AL. L.L.B., - RESIDENT
2. SRI. SRI H.V.MAHADEV, B.A., L.L.B., - MEMBER
3. SMT. ANUPAMA.R, B.COM. L.L.B., - LADY MEMBER

COMPLAINANT	Raju B.H S/o Late Hanumanthappa .B Aged about 75 years, R/o #120, N.H 206, Banavara, Arasikere Taluk. (Rep. by Sri KMR, Adv.,)
Versus	
OPPOSITE PARTIES	1. C.E.O Hyundai Motor India Ltd. 2 nd & 6 th Floor, Corporate One, Baani Building, Plot No.5, Commercial Centre, Jasola, New Delhi-110 025. 2. Central Regional Office 1&2, Unit No.602-605, 6 th Floor, Elegance Tower, Plot No.8, Jasola, New Delhi-110 025. 3. General Manager, Plot No.H-1, SIPCOT Industrial Park, Irrugattukottai, N.H-4, Sriperumbudur Tq, Kanchipuram District, Tamil Nadu-602 117. (OP.1,2&3 - Sri KND, Advocate) 4. Manager, Advathi Motors Pvt. Ltd. Plot No.26/A/B/C, Sy No.51, Belwadi Indl Area, Kasaba Hobli, Mysore-18. 5. Manager, Advathi Hyundai, SLN Commercial Complex, SLN Krupa, Thanniru Halla, B.M Road, Hassan-573 201. (OP.4&5 - Sri STS, Advocate)
Date of filing of complaint	08.04.2021
Date of service of notice to OPs	23.04.2021 & 12.07.2021

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Date of order	09.10.2023
Total period taken	2 years 6 months

ORDER
DELIVERED BY SMT. ANUPAMA.R, LADY MEMBER
On behalf of the bench

This is a complaint filed by the complainant U/s 35 of the Consumer Protection Act 2019, praying this commission to direct OPs to pay Rs.7,00,000/- with 18% interest for his brand new car, and Rs.10,00,000/- as damages, mental agony pain sustained along with Rs.10,000/- as expenses of litigation.

2. Brief facts of the case is as under;

Complainant had purchased a brand new Hyundai i.e., Santro M.T sportz car from OP.4 which was manufactured by OP.1 to 3 by paying Rs.6,25,663/- as cash on 11.06.2019 to OP.4. Same was delivered by OP.4 on 11.06.2019 and registered as KA-13-P-7173. Complainant used the car with due care and also got it serviced twice. 1st service was done by OP.4 on 04.09.2019 and second service was done by OP.5 on 26.06.2020. OP.5 checked the car after servicing and same was mentioned in the check list and car was delivered to the complainant. On 17.10.2020 by 10.30 a.m complainant was travelling in his car from Banavara to Arasikere along with his driver Mr. Srinivas. All of a sudden car was caught on fire. Both had to move out of the car. Public helped them to put off the fire. Same was intimated to OP.4&5 and later complainant filed F.I.R in Banavara police station. Mahazar was conducted. Insurance company visited the spot and formalities work carried out. OP.5 visited the spot, took the car along with them, assuring the complainant to make alternate arrangements. Believing the

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assurance of OP complainant waited for few days and repeatedly requested Ops to provide ~~an~~ alternate vehicle, all though the said vehicle was within warranty period. Aggrieved by the attitude of the Ops, complainant issued a legal notice to the OPs though same was served they have not replied. Hence this complaint.

3. Upon service of notice to OPs, they appeared through their counsel, within stipulated period their version was not filed. Hence version of OPs taken as nil.
4. On 23.07.2021 OP.2&3 ~~were~~ placed ex-parte and on 16.08.2021 Sri KGN filed power for OP.2&3 with IA u/o 9 rule 7 of CPC to set-aside ex-parte order same was allowed. Then case is posted for version of OP.1. On 21.10.2021 Ops version was taken as nil. Later Ops filed application seeking permission to file version though the stipulated period is over under consumer protection Act our predecessor allowed the application which was not suppose to do according to sec. 38 (2) (a) of CPA. Later OP counsel filed their version and lead evidence.

5. **Version of OP.1&2 is as under;**

OPs denied all the allegation stated in the complaint and contended that this complaint is not maintainable as it fails to bring in any record, a cogent reason of default on the part of Hyundai Motors Pvt. Ltd. i.e., Ops. Further contended that this complaint is frivolous, misconceived and misleading facts and was to get gain an undue advantage by filing this complaint. It was submitted that the complainant had drastically failed to substantiate role of OP in the entire transaction. They are the manufactures, on payment of price of the car by OP.4 purchased the car by them and sold to the

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complainant under sale invoice. Title of the Hyundai vehicle passes on to the concerned dealer, the moment it is put on a common carrier. There is no allegation related to performance of the car manufactured by them. They won't sell the car to individual, they only sell the car to their dealer's. Dealer's are responsible for any service of the car. They are the reputed company does not indulge in any deceiving / misleading / unfair activities and delivering responsible service towards consumer satisfaction. Hence there is no deficiency of service on their part and pray the commission to dismiss the complaint against them.

6. Version of OP.4&5 is as under;

They denied all the allegation contended in the complaint and contended that this complaint is not maintainable either in law or on facts. The complainant is vexatious and untenable. Further contended that complaint is liable to be dismissed for non-joinder of necessary party i.e., the indemnifier insurer. Complainant had purchased the said car from OP at their branch outlet at the address of the OP.4 and said that the car was serviced by them. They contended that the car was caught on fire for which under no circumstances they were responsible. Complainant admitted that car was in good condition till complainant had brought for servicing with them. No electrical circuit defect was found at the time of servicing. Car was in good conditions from the date of purchase till the dates on which due services were rendered by them. And also contended that complainants has not taken any reasonable care in maintaining the vehicle. It was probable that mice would have entered engine or cabin of the car and would have bitten the electrical wires and peeled the insulation. This damage could have

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been prevented by the complainant by taking adequate care. It is also contended that complainant has not made case of defective manufacture such defect would have been detected while carrying out the due services itself. It was further contended that vehicle was insured, therefore the claim of the complainant lies primarily on insurance company and for all purposes lies against the indemnity of the insurance. Under no circumstance OPs are liable for the fire accident as it did not happen because of the manufacturing defect or their negligence. There is no deficiency of service on their part. Hence pray the commission to dismiss the complaint against them.

7. On behalf of complainant he himself has filed the affidavit by way of chief examination as CW.1 and got marked the documents as Ex.P-1 to P-32.
8. On behalf of OP.5 Sri Doddegowda.C filed affidavit by way of chief examination as RW.1 and got marked Ex.R-1 to R.3.
9. On behalf of OP.1&2 Sri R.Rahul, Manager has filed the affidavit by way of chief examination as RW.2 and got marked the documents as Ex.R-4 to R-6.
10. Interrogatories and reply to interrogatories filed by both parties.
11. Arguments of both parties heard.
12. Ongoing though the complaint, affidavit and documents the points that would now arise for our consideration are as under;
 1. Whether there is any deficiency of service that was committed by opposite parties to the complainant?
 2. What order?

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13. Finding on the above points is as follows;

Point No.1: Partly affirmative.

Point no.2: As per final order.

// R E A S O N S //

14. **Point No.1:** Complainant in his affidavit evidence reiterated all most all the facts stated in the complaint. In support of his case he has produced copy of the delivery receipt, debit note, GST tax invoice, liberty general insurance policy, copy of the registration given by the RTO, TP, sales certificate, form-22, copy of the application submitted to RTO, copy of the vehicle inspection certificate, extended warranty, RTC, service coupon, repair order, vehicle condition report forms, 3 photos, acknowledgement given by the police, copy of the complaint given to the police, shot mahazar, original copy of the fee creation, insurance policy, copy of the voucher given by the insurance company, office copy of the legal notice, DL, extract DL, statement account, toll receipt, 5 postal receipts, postal acknowledgement, reply notice and survey report which are marked as Ex.P-1 to P-32.

15. On the other hand OPs filed their affidavit evidence and reiterated all most all the facts stated in the version and contended that there is no deficiency of service done by them and prayed to dismiss the complaint. In support of his case they had produced office copy of the reply notice, postal receipt, authorization letter, copy of the relevant part or the dealership agreement, copy of the maintenance service slip and copy of the picture of the damages parts of the vehicle which are marked as Ex.R-1 to R-6.

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16. On perusal of the documents, the complainant has purchased a car on 11.06.2019 from OP for Rs.6,25,663/-. Complainant being resident of Arsikere got the car registered with RTO Hassan, who allotted KA-13-P-7173 as registration number. Same was insured with the New India Assurance Company. On 17.10.2020 car was caught in fire. At the time of the accident the policy was in force. After the accident the car was taken to the OP.5 garage. These facts are not disputed by OPs. The main allegation of complainant is that after accident OP.4&5 took away the car, till today they have not returned it to back him. Though the car was burnt fully they have not made any attempt to make any alternate arrangement as assured by them at the time of accident.
17. On perusal of the document Ex.P.11 is the certificate which shows that the vehicle in dispute was having extended warranty up to 13.06.2023. The fire accident occurred on 17.10.2020. No doubt that the vehicle met with the accident within the warranty period. Such being the case on 26.06.2020 service of the car was done by OP.5 i.e., at Hassan show room of the company and certified in the check list that the car was in good condition same was reflected in Ex.P-13. In this document company service centre clearly mentioned about the status that the electrical things in the car was in good condition and repair was carried out to all the electrical system. All parts of the car was checked during the service and certified that car was in good condition, car caught on fire within 4 months from the date of service. For this company contended that mice may have cut of the circuit wire, hence this incident could have occurred. Since there is no evidence, this cannot be considered.

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18. Complainant alleged that due to manufacturing defect, the vehicle was burnt. On going through the documents, car was purchased on 27.06.2019 and incident occurred on 17.10.2020 i.e., after 1 year 3 months and 20 days. The point is that car in question was no doubt burnt in fire, while travelling on the road. In such case car was caught by fire automatically with electric circuit defect. It is not counter by Ops. Generally in case of vehicle moving on the road caught fire will be treated as manufacturing defect. Hence there is no expert evidence/report needed to prove this as it is Res ipsa Loquitor – The things speaks for itself. Moreover, the OP.4 & 5 visited the spot and while taking the vehicle to their service centre assured to the complainant that there is manufacturing defect in the vehicle and with the promise to replace the new vehicle soon. Nowhere in the version Ops denied this. Such being the case, Ops have to replace the vehicle which is suffering from manufacturing defect, since the vehicle was new one and burnt on the road.
19. Complainant produced a survey report. In that report surveyor recommended a payment of Rs.4,36,042/- as IDV value + salvage amount of Rs.2,46,000 We have notice that Ops never made any attempt to inspect the vehicle with expert to detect the cause for fire. Noted Judgement Hindusthan Motors V/s Ashok Narayan Pawar in 2015 SSC online NCDRC 3 (decided on January 9, 2015).where in it is decided that in case of fire accident, it will due to the manufacturer defect. Hence manufacturers are liable to pay the compensation to the complainant. Op.1&2 in their affidavit stated that expert opinion is mandatory in case of fire accident. Whereas, in case Philip Mampilli V/s Premier Auto Mobiles Ltd., reported that expert opinion for declaring manufacturing defect is not necessary to

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decide the case. OP.1 & 2 in their objection contended that their duty is finished when they lodged the vehicle to the carrier. But they cannot escape their liability by saying so, even after the sale of vehicle the liability will continue till the time of warranty.

20. Generally manufacturing defects are

1. Faulty ignition switches
2. Exploding air bags
3. Defective tyres
4. Faulty child car seats
5. Defective seat belts
6. Faulty heated seats
7. Seat failure

Generally auto defects may cause more fires than any other issue. Many of these defects are electrical in nature which may ignite other parts of the vehicle. When the person is driving a car that is engulfed in flames, the occupants of the vehicle may suffer severe injuries. As car technology grows the potentials for failure grows with it. The automation of vehicles is coming more widely used, as pioneered by tesla. The potential for catastrophic failure can't be eliminated entirely. Due to the fast paced technology upgrades that we see in cars, a three year old car no longer has upto date safety devices become more complicated systems, they become more prone to faults and failures. This can give rise to unexpected and unintended defects that can result in injury. Ops have not proved that there is no manufacturing defect of the said vehicle. Hence they are liable to pay cost of the new vehicle or replacement of the same brand vehicle to the complainant, as it the case of fire accident of running vehicle on road with in warranty period. Res ipsa Loquitur – Things cannot be proved. ^{in this} In case of fire accident this principle will apply.

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21. Complainant produced the survey report dated 25.11.2020 which is marked as Ex P-32. On going through the report it is clear that all the parts in the car was totally burnt and estimation of repair by the surveyor is Rs.4,36,042/-. And salvage value of the vehicle is Rs.2,46,000/-. It appears from the said report that the car was totally damaged in fire.
22. The learned counsel for OPs argued that, this is the case of mis-joinder of necessary party by the complaint i.e., complainant had to make insurance company as a necessary party. Yes it is true that though the policy was in force complainant did not choose the insurance company as a party for the claim, for this complainant contention is that car was not with his custody. But in the case of fire accident all necessary formalities has to be taken by the parties. In this case though all formalities had done by the complainant but he has not claim the insurance amount from the New India Assurance Company though the policy was in force at the time of the accident. Since it is a case of fire accident in such cases insurance company has to indemnify to the party. But we noticed that complainant has not made any attempt to claim the insurance which was in force. Hence we are of the opinion that it is necessary to implied insurance company as necessary party to this complaint. On 20.9.23 advocate for complainant filed an application U\O 1 r 10 CPC, to issue notice to proposed O.P i.e insurance company as party to the case. Steps taken. On 3.10.23 proposed OP called out but found absent, hence placed as ex-party. Moreover complainant has not claimed the insurance amount from proposed OP. It is not mandatory under vehicle insurance to claim the insurance. In prayer

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column also complainant has not seeks remedy against insurance company. In such case no liability arises against proposed OP.

23. Complainant contended that at the time of accident company people taken the vehicle to their custody and with the assured that they will replace the new vehicle since the said vehicle is within the warranty period and suffering from defect. Complainant believed the words of Ops and waited for a long period. Now the car in question was still lying in the work shop of OP 5. It is the duty of OP 5 to intimate the accident to the insurance company. They have not produced any evidence regarding the estimation of repair given to the complainant. We have noticed that the complainant has taken all other formalities that ought to take by the vehicle owner.

24. More over complainant alleged that the said vehicle was used by the company person for their own use. For this complainant has produced the toll receipt which is marked as Ex.P.28. On going through the receipt dated 01.12.2021 after 1 year 2 months from the date of incident, car was on road, without notice of the complainant. In such case what made OP.4&5 to intimate complainant regarding the repair of the said vehicle. More over OP 4&5 did not denied the document Ex.P-28. We have noticed that complainant in his old age moving Arsikere to Hassan to enquire about the status of his car incurred lot of physical, mental stress and financial burden. By doing this OP clearly proved that they misused the situation and using the vehicle in question without permission of the owner. OP.5 not denied the Ex.P.28. From this it is confirmed that OPs not made any attempt to protect their customer by giving prompt service. With the investment of the age old complainant, OP.5 eared in doing their duty. Company people do not produce any evidence to show that

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they have made attempt to settle the matter. From this it is clear that they deliberately avoid the complainant. By this OP.5 done deficiency of service to their customer. Hence we are of the opinion that OP 5 has to pay Rs.1,00,000/- for deficiency of service and unauthorized use of the vehicle, Rs.20,000/- as cost of litigation and Rs.20,000 for mental agony. Complainant has to give necessary documents regarding the insurance to OP.5.

25. The complainant has sought for a sum of Rs.7,00,000/- with 18% interest pertaining to brand new car and a sum of Rs.10,00,000/- as damages for mental agony pain etc., with 18% interest from 17.10.2020 and to pay Rs.10,000/- as expenses. Considering the facts and circumstances of the case this commission is of the opinion that, the complainant is entitled for Rs.1,00,000/- as a compensation vide section 39(d) and Rs.20,000/- towards court costs since the complainant has spent some amount for engaging the counsel preparing the complaint, sending notice to opponent and attending the commission and Rs.20,000 for mental agony. Hence the complainant is entitled for cost of the car or brand new car of the same brand has to be paid by the OP.1 to 5, Rs.20,000 for mental agony and Rs.20,000/- towards costs. OP.5 shall pay Rs.1,00,000/- towards compensation. Hence, we answer the point No.1 accordingly.

26. **Point No.2:** In view of our findings on point No.1, we proceed to pass the following;

ORDER

- 1. The complaint is partly allowed.**
- 2. OP No.1 to 5 are jointly and severally liable to give a new car of the same brand or value of the car to the**

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- complainant along with Rs.20,000/- for mental agony, Rs.20,000/- for cost to the complainant.
3. OP.5 is liable to pay Rs.1,00,000/- compensation to the complainant for mis-use of the vehicle.
 4. OP No.1 to 5 have to pay the above said amounts within 45 days from the date of this order. In case of non-compliance of the order the entire amount shall carry interest @ 9% P.A till its realization.
 5. Complaint against proposed OP is dismissed.
 6. Office is directed to send free copies of this order to all the parties at free of cost within three days from the date of this order.

(Dictated to the Stenographer, transcribed & typed by her, transcript corrected by us and then pronounced in open commission on this the 09th day of October 2023)


(SRI H.V.MAHADEV)
MEMBER


(SMT. CHANCHALA)
PRESIDENT


(SMT. ANUPAMA.R)
LADY MEMBER

:: ANNEXURES ::

Witness examined on complainant side:

CW.1 - Raju B.H

Documents produced on behalf of complainant side:-

- | | |
|---------|--|
| Ex.P-1 | Copy of the delivery receipt |
| Ex.P-2 | Debit note |
| Ex.P-3 | Copy of the GST tax invoice |
| Ex.P-4 | Liberty general insurance policy |
| Ex.P-5 | Copy of the registration given by the RTO |
| Ex.P-6 | Copy of the TP |
| Ex.P-7 | Copy of the sales certificate |
| Ex.P-8 | Form - 22 |
| Ex.P-9 | Copy of application submitted to RTO |
| Ex.P-10 | Copy of the vehicle inspection certificate |