

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION: NORTH-EAST

GOVT. OF NCT OF DELHI

D.C. OFFICE COMPLEX, BUNKAR VIHAR, NAND NAGRI, DELHI-93

Complaint Case No.156/17

In the matter of:

Shri Karun Kumar Bheda

S/o Ram Kumar,

R/o: House No. 399, Gali No. 03,

Block D, Nehru Vihar, Delhi 110006

Complainant

Versus

M/s Sony India Pvt. Ltd.,

Through its Director(s)

At its Registered Office

A-31, Mohan Cooperative Industrial Estate,
Mathura Road,

New Delhi 110044

Opposite Party

DATE OF INSTITUTION: 04.05.2017

JUDGMENT RESERVED ON: 26.04.2023

DATE OF ORDER : 10.10.2023

CORAM:

Surinder Kumar Sharma, President

Anil Kumar Bamba, Member

ORDER

Anil Kumar Bamba, Member

The Complainant has filed the present complaint under Section 12 of the Consumer Protection Act, 1986.

Case of the Complainant

1. The case of the Complainant as revealed from the record is that on 24.02.2015, the Complainant had purchased a mobile hand set "Sony Xperia Z1" from the Opposite Party from their authorized dealer "Hi-Fly Infotech Mukherjee Nagar, Delhi" for a sum of Rs. 24,000/-. It is his case that the warranty of the said mobile hand set was one year including accident damage cover. It is his case that he met with a rain accident on 15.06.2015 in which the said mobile hand set got damaged due to water. After that the Complainant immediately, the said mobile hand set has shut down and Complainant had tried to start the phone but he could not succeed. After that the Complainant immediately gave the said mobile hand set to the authorized centre of the Opposite Party who denied to repair/service the mobile by ascertaining the reason that "your mobile is damaged due to the reason which does not come in the warranty" without checking physical condition or technical survey of the mobile. It is his case that according to the direction of the employee of the Opposite Party, Complainant approached the authorized service centre "Immortal Services, Laxmi Nagar" who deposited the mobile set of the Complainant and issued a job sheet. It is his case that Opposite Party service centre had not repaired the mobile and also did not give any reply. Thereafter, Complainant wrote an email to the Head of service of Opposite Party and they replied via an email and assured the Complainant to resolve the matter but from there no further response had been received. Complainant visited the office of Opposite Party various times and also sent various mail but they did not give any reply. After that "Immortal Services" had asked for Rs. 18,000/- for repairing the said mobile hand set and denied to give the warranty as promised. On 28.04.2016, Complainant also sent a legal notice to the Opposite Party on which the same has denied any liability against the damage to the Complainant via letter dated 27.05.2016. Hence, this shows the deficiency of service on the part of Opposite Party. Complainant has prayed to direct the Opposite Party to pay an amount of Rs. 24,000/- against the cost of the mobile with interest @ 18 % p.a. , Rs. 1,00,000/- on account of mental harassment , RS. 1,24,000/- against the loss caused to the Complainant and Rs. 10,000/- on account of litigation expenses.

Case of the Opposite Party

2. The Opposite Party contested the case and filed its written statement. It is stated that Complainant had purchased one Sony Xperia Z1/C6902 with IMEI No. 358094057654866 on 24.02.2015. It is stated that the Opposite Party No. 1 provides a limited warranty of one year on its products from the time of its original purchase and the liability strictly lies in accordance with the terms and conditions of the warranty provided by it and cannot be held liable for the claims falling outside the

scope of the warranty. It is stated that the Opposite Parties have also provided “User Guide” along with the handset, which mentions the precautions one should take while using the phone, and if a person does not comply with the same then Opposite Party No. 1 is not liable for any damage/defect in the product. Further, this handset has been certified by international bodies for certain standards relating to water and dust resistance and these standards are acceptable worldwide. On basis of these certifications the Opposite Party No. 1 was making the claim regarding ‘water and dust resistance’ only which was not maintainable as company does not provide any warranty against the defect caused due to Dust and Water. The relevant portion of the ‘use guide’ is as follows:

Never submerge the device, the micro USB port, the micro SD card, the micro SIM card or the headset connector in water, expose the device to any liquid chemicals, or expose your device to moist environments with extreme high or low temperatures. If water or liquid gets on the micro USB port, the micro SD card, the micro SIM card and the headset connector, wipe it off with a dry cloth. The water resistance of the micro USB port, the micro SD card, the micro SIM card and the headset connector is not guaranteed in all environments or conditions.

If water gets on the speaker, dry the speaker for approximately three hours before using it again.

All compatible accessories, including batteries, chargers, handsfree devices, micro USB cables, micro SIM cards and micro SD cards are not dust and water resistant on their own.

Your warranty does not cover damage or defects caused by abuse or improper use of your device. If you have any further questions about the use of your products, refer to our Customer support service for help.

IP (Ingress Protection) rating

Your device has an IP rating, which means it has undergone certified tests to measure its resistance levels to both dust and water. The first digit in the two-digit IP rating indicates the level of protection against solid objects, including dust. The second digit indicates how resistant the device is to water. The higher the numbers, the higher the respective protection. The IP ratings of your device are IPX5, IPX7 and IP5X. This means that your device is dust protected and is protected against the effects of immersion and low pressure water stream. So you can use the device in extreme weather conditions, for example, when it's snowing or raining, or when humidity levels are high. You can also use the device in dusty or sandy environments, and when your fingers are wet.”

3. Therefore, it is clear that under the terms of warranty the Opposite Parties are not liable to repair or replace the “handset”, as the product lies outside the scope of warranty. It is averred that the defect in the handset has arisen due to ingress of liquid. It is stated that after purchasing the handset, the

Complainant approached service centre on 09.07.2015 raising an issue of “Handset not getting on” with the aforesaid mobile handset. The service centre without any delay immediately attended the Complainant and inspected the handset. Upon inspection it was observed by the service centre that the said handset got damaged due to liquid ingress. The conditions of the handset was not good at all and it seems as if the handset was roughly been used by the Complainant. It is further submitted that the service centre has clearly observed that the liquid entered the said handset and the same can be easily established from the fact that the liquid indicator turned red. It was further observed by service centre that the liquid entered the handset through open ports or can say that the ports were not tightly closed. This was very well established by the service centre and the photographs were also taken in this regard at the time of inspection. It was further observed by the service centre that there was no inherent defect in the said handset as the WRT (Water Resistance Test) was also passed which establishes the fact that there was no inherent defect in the handset. Due to the same it is clearly that the liquid entered the handset through open ports not tightly closed. It is stated that due to the above said reasons the warranty with respect to the said handset stood void and therefore, an estimated cost of repair was shared with the Complainant. However, the same was rejected by the Complainant The Complainant refused to go for any chargeable repair action. But surprisingly the Complainant filed the present complaint and did not collect the handset. It is further stated that Opposite Party No. 1 even sent a letter dated 27.05.2016 wherein it was clearly mentioned that handset got damaged due to the liquid damage and the cause of the damage was entirely external in nature as the ports were open through which the water entered the set thereby damaging it totally. It was further mentioned in the letter that the due to liquid damage condition of the handset the only possible solution is chargeable service centre. Apart from the letter the service centre even intimated the Complainant to collect his handset and for that the service centre contacted the Complainant several times. It is stated that the Complainant has miserably failed to prove any defect in the handset neither placed on record any analysis test report for the perusal of this Hon'ble Forum and in the absence of any technical report on record; the complaint of the Complainant deserves dismissal on this ground alone. It is submitted that the Complainant has not annexed any report of an independent expert as defined under Section 2(1) (a) of the Consumer Protection Act, 1986 with regard to any alleged manufacturing defect in the said mobile. In view of the aforesaid and in the light of the Complainant having failed to mention any expert opinion to substantiate the allegations made in the complaint, the present complaint is not maintainable. It is stated that in another case it was very well observed by the Hon'ble Maharashtra State Consumer Dispute Redressal Commission in Divisional Manager, Customers.. vs. Mr. Yakub Sahebu Tadvi where the Hon'ble Commission stated U/S 13(c) of Consumer Protection Act that in cases where alleged defect cannot be determined without proper analysis, expert evidence appears to be necessary. Since, there is no expert evidence, the allegations of manufacturing defect as made by the Opposite Party are not proved and therefore the Forum ought to have dismissed the complaint.

Rejoinder to the written statement of Opposite Party

4. The Complainant filed rejoinder to the written statement of Opposite Party wherein the Complainant has denied the pleas raised by the Opposite Party and has reiterated the assertion made in the complaint.

Evidence of the Complainant

5. The Complainant in support of his complaint filed his affidavit wherein he has supported the averments made in the complaint.

Evidence of the Opposite Party

6. To support its case Opposite Party has filed affidavit of Mr. Priyank Chauhan, wherein, he has supported the case of the Opposite Party as mentioned in the written statement.

Arguments & Conclusion

7. We have heard the Complainant in person. We have also perused the file and written arguments filed by the Complainant. The case of the Complainant is that he has purchased a mobile phone manufactured by Opposite Party on 24.02.2015. The said mobile hand set was having warranty of one year including accident damage cover. On 15.06.2015, Complainant met with a rain accident in which the said mobile hand set got damaged due to water and after the accident, the said mobile hand set has shut down and Complainant had tried to start the phone but he could not succeed. Complainant approached the authorized centre of the Opposite Party for repairing of the said phone. The representative of authorized service centre of Opposite Party denied to repair/service the mobile phone by telling him that the said mobile phone is damaged due to the reason which does not come in the warranty. After taking all the matter with the higher authority of the Opposite Party, Complainant visited the authorized service centre of the Opposite Party again for the repairing of the said mobile phone and service centre of the Opposite Party asked for Rs. 18,000/- for the repairing of the mobile phone, since the mobile phone was out of the warranty. The Complainant relying upon the condition no. 5 of service terms and conditions of accident damage cover i.e. This Accidental Damage Cover indemnifies the customer from the losses/damages which is/shall be occasioned to the product due to physical breakage/damage, liquid spillage and short circuits due to electricity voltage fluctuation. Complainant submitted that contention of Opposite Party regarding void warranty on the ground of water entered into the form is not tenable. Hence, this shows the deficiency of service on the part of Opposite Party.
8. The case of the Opposite Party is that it is admitted that the Complainant had purchased the mobile phone on 24.05.2015 within the warranty of one year on the said phone and the liability strictly lies in accordance with the terms and conditions of the warranty provided by it and cannot be held liable for the claims falling outside the scope of the warranty. It is also stated by the Opposite Party that they were also provided "User Guide" along with the handset, which mentions the precautions one should take while using the phone, and if a person does not comply with the same then Opposite Party not liable for any damage/defect in the product. Further, this handset has been certified by international bodies for certain standards relating to water and dust resistance and these standards are acceptable worldwide. On basis of these certifications the Opposite Party was making the claim regarding 'water and dust resistance' only which was not maintainable as company does not provide any warranty against the defect caused due to Dust and Water. The relevant portion of the 'use guide' is as follows:

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If water gets on the speaker, dry the speaker for approximately three hours before using it again.

All compatible accessories, including batteries, chargers, handsfree devices, micro USB cables, micro SIM cards and micro SD cards are not dust and water resistant on their own.

Your warranty does not cover damage or defects caused by abuse or improper use of your device. If you have any further questions about the use of your products, refer to our Customer support service for help.

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9. Therefore, it is clear that under the terms of warranty the Opposite Party are not liable to repair or replace the “handset”, as the product lies outside the scope of warranty. It is averred that the defect in the handset has arisen due to ingress of liquid. It is further stated by the Opposite Party that when Complainant approached service centre on 09.07.2015 raising an issue of “Handset not getting on” with the said mobile handset. The service centre without any delay immediately attended the Complainant and inspected the handset. Upon inspection it was observed by the service centre that the said handset got damaged due to liquid ingress. The conditions of the handset was not good at all and it seems as if the handset was roughly been used by the Complainant. It is further submitted that the service centre has clearly observed that the liquid entered the said handset and the same can be easily established from the fact that the liquid indicator turned red. It was further observed by service centre that the liquid entered the handset through open ports or can say that the ports were not tightly closed. This was very well established by the service centre and the photographs were also taken in this regard at the time of inspection. It was further observed by the service centre that there was no inherent defect in the said handset as the WRT (Water Resistance Test) was also passed which establishes the fact that there was no inherent defect in the handset. Due to the same it is clearly that the liquid entered the handset through open ports not tightly closed. It is stated that due to the above said reasons the warranty with respect to the said handset stood void and therefore, an estimated cost of repair was shared with the Complainant. However, the same was rejected by the Complainant and Complainant refused to go for any chargeable repair action. The Opposite Party also sent a letter on 27.05.2016 to the Complainant wherein it was clearly

mentioned that handset got damaged due to the liquid damage and the cause of the damage was entirely external in nature as the ports were open through which the water entered the set thereby damaging it totally. It was further mentioned in the letter that the due to liquid damage condition of the handset the only possible solution is chargeable service centre. It is further stated that the Complainant has miserably failed to prove any defect in the handset neither placed on record any analysis test report for the perusal of this Hon'ble Forum and in the absence of any technical report on record, the complaint of the Complainant deserves dismissal.

10. In view of the above, Complainant himself admitted that due to rain accident his phone was got damaged due to water and he did not lead any evidence regarding water was not entered in the said mobile handset due to that warranty becomes void.
11. In view of the above, we are of the opinion that there is no deficiency of service on the part of Opposite Party. Hence, the complaint is dismissed.
12. Order announced on 10.10.2023.

Copy of this order be given to the parties free of cost

File be consigned to Record Room.

(Anil Kumar Bamba)
(Member)

(Surinder Kumar Sharma)
(President)