

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 310 OF 2017

(Against the Order dated 10/08/2016 in Appeal No. 220/2015 of the State Commission
Bihar)

1. SURESH PRASAD GUPTA

S/O. LT. NENCHAND SHAH, R/O. MOHALLA CHAVAR
TAKIYA PO+PS. SASARAM,
DISTRICT-ROTHAS
BIHAR

.....Petitioner(s)

Versus

1. M.D TATA MOTORS & 2 ORS.

MARKETING AND CUSTOMER SUPPORT, PASSENGER
CAR BUSINESS UNIT FORD 5TH FLOOR, DR. B.B.
GANDHI MARG, FORT,

MUMBAI-400023

MAHARAHSTRA

2. ARJUN KUMAR GUPTA, ANAND VIHAR,

GUINEA MOTORS PVT. LTD. GROUND FLOOR, ANAND
VIHAR COMPLEX, WEST BORING CANAL ROAD,
BORING ROAD,

PATNA-800001

BIHAR

3. GOPAL PRASAD, PAREENA MOTORS,

GAYA DHOBI ROAD, NH-83, KHARANTI BODHGAYA,
NEAR GAYA INTERNATIONAL AIRPORT,

GAYA-823005

BIHAR

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

HON'BLE DR. INDER JIT SINGH, MEMBER

FOR THE PETITIONER :

MR. ANUKUL RAJ, ADVOCATE

MR. ANUBHAV DEEP SINGH, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENT NO.1: MR. ANKIT CHATURVEDI,
ADVOCATE

MR. SHUBHAM AGARWAL, ADVOCATE

FOR THE RESPONDENT NO. 2: MR. SHEKHAR KUMAR,
ADVOCATE

MR. VIJAY KUMAR, ADVOCATE.

FOR THE RESPONDENT NO.3: NEMO

Dated : 06 July 2023

ORDER

JUSTICE SUDIP AHLUWALIA, MEMBER

This Revision Petition has been filed by the Petitioner/ Complainant against the Respondents / Opposite Parties challenging the impugned Order dated 10.08.2016 passed by the State Consumer Disputes Redressal Commission, Patna, Bihar, in Appeal bearing No. 220 of 2015. Vide such Order, the State Commission had allowed the Appeal while setting aside the Order dated 18.06.2015 passed by the District Consumer Forum, Rohtas (Sasaram), in Case No. 13/2013.

2. The brief facts of the case are that the Complainant had purchased a Tata Indigo Mazda QZ vehicle bearing registration no. BR-24H-8111 by taking a loan from Tata Motors on 18.01.2010 as it was needed on a regular basis for the treatment of his family members. It was the case of the Complainant that he had taken the car to Pirana Motors, Gaya, on 21.10.2010 as the accelerator used to come to a halt. However, no attention was paid and the vehicle was returned without any clarification. Again, on 26.12.2010, the Complainant took the vehicle to Kumar Distributors, Patna, and informed them about the defect. However no defect was traced and the Complainant was not given a clear response. Now, the Complainant began to believe that a defective engine was given to him by the Tata Motors. It was stated that the Complainant received no gain by purchasing the vehicle and he always had to use a rented vehicle for his family members. Again, on 06.09.2011, the Complainant took the vehicle to Guinea Motors, Patna, where the defect of poor pickup was notified and a few things under guarantee were changed. Despite this, the defect in the vehicle remained the same. Again on 21.09.2011, the Complainant visited Guinea Motors Pvt. Ltd., Patna, where it was informed that there are troubles in the engine of the vehicle. Consequently, the Complainant handed over the vehicle to them on 02.12.2011 for removal of the defects. It was further stated that the vehicle was under Warranty till 18.01.2012 and was handed over to Guinea Motors before the expiry of such period. But on 21.02.2012, Guinea Motors intimated the Complainant that Tata Motor had denied to cure the defects. Hence, it was alleged that Tata Motors, Pirana Motors and Guinea Motors were working in connivance a faulty engine was sold to the Complainant. On 23.05.2012, the Complainant was informed that the he had to bear 33% of the expenses incurred on repairing and the Complainant paid a total of Rs.50,000/- as per demand when the total expense was Rs.80,000/-, hence, ending up paying more than 33%. Despite incurring expenses on repair, the defects still persisted and an additional defect of leakage of engine oil was spotted after the vehicle was brought back by the Complainant from Guinea Motors. Hence, the vehicle was taken to Guinea Motors, Patna, on 13.10.2012. A Legal Notice dated 10.12.2012 was sent to all the Opposite Parties. Thereafter, the Complaint was filed before the District Forum being aggrieved by the acts of the Opposite Parties, seeking payment of Rs.5,00,000/- for fulfilment of loss.

3. It has been noted by the Ld. District Forum in its Order dated 18.06.2015 that the Opposite Party No.2 was proceeded Ex-parte due to non-appearance. It was also noted by the Forum that the Opposite Party No.1 filed its reply and stated that no Technical Report has been filed by the Complainant to show deficiency in the vehicle which was a necessity under Section 13 of Consumer Protection Act and therefore dismissal of the Complaint was prayed for. It was further noted that the Opposite Party No.3 rebutted the allegations of the Complainant in their reply and stated that a Test Drive was conducted by Parina Motors and then it was handed back to the Complainant and at that time there was no malfunctioning in the vehicle. Hence, dismissal of the Complaint was also sought for by the Opposite Party No. 3.

4. The Ld. District Forum vide its Order dated 18.06.2015 allowed the Complaint while observing that the car purchased by the Complainant did not come in any use to the Complainant, rather it became a trouble for removing the defects causing financial, mental and physical loss to the Complainant. Therefore, the Ld. District Forum directed the Opposite Parties No. 1 to 3 to pay Rs.5,00,000/- to the Complainant.
5. Aggrieved by the above Order, First Appeal bearing No. 220 of 2015 was filed by Appellant/Opposite Party No.1 against the Respondents/ Complainant and Opposite Parties No.2 & 3 (Opposite Parties No. 2 & 3 being proforma parties) before the State Consumer Disputes Redressal Commission, Patna, Bihar.
6. The Ld. State Commission vide impugned Order dated 10.08.2016 allowed the Appeal while setting aside the Order of the Ld. District Forum and observed *inter alia*:-

“4. We have heard the rival submissions, material on record as also the impugned order. The fact is not denied that the complainant did not take his vehicle for the required free servicing which is must after new vehicle. This apart on perusal of the complainant the allegation with respect to the defect is regarding the pickup and after minor defect of percolating of the engine oil. The above two defects could not be attributed a, manufacturing defects. Moreover there no technical expert report after thoroughly testing the vehicle so as to find out where the vehicle get manufacturing defect. There is no such report on record nor any attempt to bring defect allegations in the complaint. The vehicle admittedly, run more than 23000 K.M. after purchase of the vehicle a compensation of Rs.5,00,000/- as claimed by the complainant is allowed without any material on record to support the claim.”

7. Hence, the present Revision Petition has been filed by the Petitioner/ Complainant against the above-mentioned impugned Order of the Ld. State Commission.
8. Vide Order dated 01.12.2022, this Commission while allowing Interim Application bearing No. IA/3961/2022 filed by the Respondent No.2, recalled its order dated 12.08.2021 whereby the Respondents No. 2 and 3 had been proceeded against Ex parte.
9. Heard the Ld. Counsel for Petitioner and Respondents No.1 and 2. Perused the material available on record.
10. As can be seen from the relevant observations of the State Commission which were contained in the short Para No. 4 of the impugned Order, and which have been re-produced in earlier Para No. 6, the State Commission was of the opinion that the complaint was liable to be dismissed firstly because the Complainant did not take his vehicle for the required free servicing which is a must for a new vehicle. Secondly, according to the State Commission, *“the defect is regarding the Pickup and after minor defect of percolation of the engine oil. The above two defects could not be attributed as manufacturing defects.”* Thirdly, the State

Commission was of the opinion that no Technical Expert had tested the vehicle to find out whether the vehicle had got manufacturing defects and there was no such Report on record nor any details of the nature of defect as alleged in the complaint, and also that the vehicle in question had run more than 23,000 kms after its purchase.

11. The Ld. State Commission would therefore clearly appear to have over-looked a vital document issued by the Respondent/Dealer, Guinea Motors Pvt. Ltd., which purports to be under instruction of the Manufacturers i.e. the Respondent No. 1 "M.D. Tata Motors". Such document happens to be the letter dated 21.2.2012 addressed to the Petitioner/Complainant (Annexure P-3) and the entire material contents of the same are as follows-

"Dear Sir,

This has reference to feedback received by us on 20/02/2012 at the outset we regret for the inconvenience caused.

As per your complain there is poor pick-up in your vehicle. We diagnose and found Engine O/H was needed. The damage to the Engine was caused due to suspected dust intry. TML has rejected your warranty claim. So, please give approval to proceed the repair work on charge basis.

In case of any further query or clarification, please feel free to contact with undersigned..."

12. As can be seen from the contents of the aforesaid letter, the Respondents had diagnosed and found that overhauling of the vehicle's engine was needed in the light of the fact that it was the persistent complaint of the Petitioner that the vehicle was afflicted with a long standing malady of poor pick-up. It is to be noted that the letter was issued by the Dealer/Respondent on 21.2.2012 which was a good 16 months after the vehicle had been purchased by the Complainant, and it was throughout this long period of time that it continued to suffer from the problem of a poor pick-up inspite of several attempts to rectify the defect in the intervening period. Consequently, the view of the State Commission that the defect "regarding the pick-up", or for that matter "percolation of the engine oil" which also continued inspite of refilling of the engine oil by the Dealer, as mentioned by the Complainant in Para 8 & 9 of his statement on Affidavit, could not be regarded as any

“minor defects” considering that the same problems remained over a consistent period of time in spite of several attempts to rectify the same.

13. It may also be observed that by way of the aforesaid letter (Annexure-P3), the dealer had communicated to the Complainant that the damage to the engine was caused “due to suspected dust entry”. No explanation was given in this regard as to how the Respondents had concluded that the damage to the engine was on account of “suspected dust entry” and whether the Complainant himself could in any manner be regarded responsible for the same. Considering that the defect was noticed by the Complainant very shortly after purchasing the vehicle which constrained him to take it back to the Respondent/Pirana Motors, Gaya, on 21.10.2010, which was just 03 days after he had taken delivery of the same, would clearly go to indicate that *prima facie* that the presumed dust entry inside the engine, if at all it did exist, could not have been attributable to the Complainant, more particularly considering that undoubtedly the engine of any vehicle is required to be a sufficiently covered and protected unit inside which no dust or any other external element normally can enter especially within 03 days from the date of it being first plied. Nevertheless, in view of the aforesaid contents of the Respondents, on 16.5.2023, this Bench noted *inter alia* –

***“We are now to analyse whether rejection of the Petitioner’s claim was justified in view of the terms and conditions set out in the warranty documents. For this purpose, the reason for rejection of the warranty claim on the part of the Manufacturer TML, which was communicated to the Complainant by the dealer (Guinea Motors Private Limited) on 21.02.2012, vide Annexure P-3 (Page No. 4) do not find mention in the concerned letter, although, it was noted therein that damage in the engine was caused due to suspected dust entry.*”**

So a close scrutiny of the circumstances on the basis of which the manufacturer first of all found that the damage had been caused by dust entry as noted, after which the question whether the same could have been a valid reason to refuse the warranty claim can be considered.

Faced with this, learned Counsel for the Respondent No. 2 seeks a short adjournment to place on record the relevant documents issued by the manufacturer, on the basis of which the letter (Annexure-P3) was issued to the Complainant.”

However, on the next date, no such document was placed on record on behalf of any of the Respondents, on account of which, the truth as well as correctness of the Statement that damage to the engine was “suspected” on account of dust entry for which the Complainant was not blamed and in any case, could not have been made to pay any charges for doing the needful; considering that delivery of the vehicle with the aforesaid defects had already been made over to the Respondents on 2.12.2011 which was much before the date of expiry of its Warranty (18.1.2012).

14. However, no documents emanating from the side of manufacturers were actually filed or tendered by the Respondents on the next date, even though opportunity for the same had been granted as a last chance earlier on 16.5.2023. There is also no material on record to indicate as to how the Respondents had come to conclusion that the apparent defect in the vehicle engine was due to “suspected dust entry” which, as already noted earlier could not have been possible since the engine of any vehicle, which is its most sensitive and critical part, necessarily is covered and protected very adequately, on account of which the chance of any entry of dust into the same, especially within the very first three days of the vehicle being put on the road is not possible. In this situation, the insistence of the Respondents/Opposite Parties to make the Complainant to pay for repairing the vehicle “on a charge basis”, when they have been unable to make out a satisfactory case that the damage had occurred due to “dust entry”(which was only ‘suspected’ by the Respondents) and not any fault on the part of the Complainant, who had made over delivery of the vehicle to the Respondents for repairs when it was still covered by Warranty.

15. Consequently, the decision of the Ld. District Forum which went in favour of the Complainant would certainly appear to be more balanced and reasonable as against the decision of the State Commission which erroneously set aside the District Forum’s order in a case in which the Appellant/Opposite party had been totally unable to establish that the malfunction in the vehicle’s engine was on account of either any omission on the part of the Complainant, or fell outside the terms of the Warranty, which were operative at the relevant time.

16. For the aforesaid reasons, the Revision Petition is allowed after setting aside the impugned Order passed by the Ld. State Commission and affirming the earlier decision of the District Forum. Parties to bear their own costs.

17. Pending application(s), if any, also stand disposed off as having been rendered infructuous.

.....J
SUDIP AHLUWALIA
PRESIDING MEMBER

.....
DR. INDER JIT SINGH
MEMBER

