

**H.P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, SHIMLA.**

(1) **First Appeal No. :** 220/2018
Date of Presentation: 05.07.2018
Order Reserved on: 18.12.2023
Date of Order: 04.01.2024

-
1. The Ashok Leyland Company, Simla Autozone, Mubarikpur Road, Amb, Una, H.P. 177204 through its Dealer.
 2. The Ashoka Leyland Company, Simla Autozone Parel, Tehsil and District Chamba, H.P. through its Dealer, now name changed to Jai Ambay Automobiles, Village & Post Office Chaned, Tehsil and District Chamba, H.P.

.....Appellants/Opposite Parties No.2 & 3.

Versus

1. Shri Lok Ram son of Shri Gian Chand, Resident of Village Dadri, Post Office Singadhaar, Tehsil Salooni, District Chamba, H.P.

....Respondent/Complainant

2. The Ashok Leyland Company, Corporate Office No.1, Sardar Patel Road, Gunidy, Chennai-600032 through its Managing Director.

.....Proforma Respondent/Opposite party No. 1.

**For Appellants : Ms.Aditi Rana & Ms.Tara Devi, Advocates
vice Mr. Prem P. Chauhan, Advocate.**

**For Respondent No.1:Mr.Karan Veer Singh Advocate vice
Mr.Divya Raj Singh, Advocate.**

For Respondent No.2: Mr.R.S. Jaswal, Advocate.

(2) **First Appeal No.:** 68/2019
Date of Presentation: 05.07.2018
Order Reserved on: 18.12.2023
Date of Order: 04.01.2024

.....

The Ashok Leyland Company, Corporate Office at No. 1, Sardar Patel Road, Gunidy, Chennai 600032 through its Managing Director.

.....Appellant/opposite party No. 1.

Versus

1. Shri Lok Ram son of Shri Gian Chand, Resident of Village Dadri, Post Office Singadhaar, Tehsil Salooni, District Chamba, H.P.

....Respondent/Complainant

2. The Ashok Leyland Company, Simla Autozone, Mubarikpur Road, Amb, Una, H.P. 177204 through its Dealer.

3. The Ashok Leyland Company, Simla Autozone Parel, Tehsil and District Chamba, H.P. through its Dealer, now name changed to Jai Ambay Automobiles, Village & Post Office Chaned, Tehsil and District Chamba, H.P.

..... Respondents/opposite parties No. 2 & 3.

Coram

Hon'ble Justice Inder Singh Mehta, President
Hon'ble Mr.R.K.Verma, Member

Whether approved for reporting?¹ Yes

¹ *Whether Reporters of the local papers may be allowed to see the order?*

For Appellant: Mr. R.S. Jaswal, Advocate.
For Respondent No.1: Mr.Karan Veer Singh Advocate vice
Mr.Divya Raj Singh, Advocate.
For Respondents No.2 & 3: Ms.Aditi Rana & Ms.Tara Devi,
Advocates vice Mr. Prem P. Chauhan,
Advocate.

.....
Justice Inder Singh Mehta, President

ORDER :-

The instant appeals are arising out of the common order dated 27.04.2018, passed by the learned District Commission, Chamba, H.P. in consumer complaint No.61/2017 titled Lok Ram versus The Ashok Leyland Company & Ors.

Brief facts of the Case:

2. Briefly, case of the complainant is that he had purchased Ashok Leyland Partner Tipper from the opposite party No.3/dealer for a sum of Rs. 11,43,000/- on 13.02.2017, which suffers from inherent manufacturing defect. The Tipper was not running properly on a plain surface by carrying even 2.5 tones, whereas, the

complainant was assured by opposite party No.3/dealer that tipper will carry load up to 4.5 tones. The tipper was having manufacturing defect. Opposite parties failed to replace the tipper with new one since it was within its warranty period. The vehicle was retained by the opposite party No.3/dealer in his workshop at Parel, Chamba for its repair. When opposite party No.3/dealer failed to resolve the defect in the vehicle, he asked the complainant to return the said tipper and undertook to return the standing loan amount of defective tipper and remaining amount in the form of down payment. Opposite party No. 3/dealer also undertook that he will also pay Rs.34021/- alongwith interest and that amount(s) incurred on insurance. Opposite party No. 3/dealer had also satisfied the standing loan amount of the tipper to Shri Ram Transport Finance Company on 29.4.2017. However, opposite party No.3/Dealer failed to refund the down payment and amount incurred on insurance of the vehicle

totaling Rs.2,49,021/-. There is deficiency in service. Hence, this complaint.

3. The complaint is contested by the opposite party No.1/manufacture by filing reply. The complainant has sought recovery of Rs.2,49,021/- from opposite party No.3/dealer and therefore, this Forum has no jurisdiction to entertain the matter of recovery. No expert report has been produced by the complainant to prove manufacturing defect. The complainant used the vehicle by overloading the same. According to norms, vehicle can carry 3565 kilograms load, but complainant overloaded the vehicle against its capacity. Complainant agreed to return the vehicle on the basis of not like and had not alleged any manufacturing defect and opposite party No.3/dealer on that basis had returned Rs.9,53,000/- to Shri Ram Finance Company and as per settlement deducted Rs.1,10,000/- on account of usage of the said vehicle and prays for dismissal of the complaint.

4. The opposite parties No.2 and 3/Dealer in their joint reply has alleged that the vehicle in question has been sold to the complainant in perfect OK condition. There was no manufacturing defect in the vehicle. As per the settlement, the opposite parties No.2 and 3/dealer had to return Rs.9,53,000/- to financier and complainant had also agreed to deduct a sum of Rs.1,10,000/- on account of usage of the vehicle from the date of purchase i.e. 13.02.2017. There is no deficiency in service. A prayer for dismissal of the complaint was made.

5. In rejoinders, the complainant has reiterated the contents of complaint and refuted the objections put forth by the opposite parties.

6. After hearing the parties, learned District Forum allowed the complaint of the complainant.

7. Feeling aggrieved by the order of learned District Commission, the opposite parties i.e. dealer and manufacturer filed these two separate appeals.

8. We have heard learned counsel of the parties and have also gone through the record carefully.

9. Learned counsel of the appellant/manufacture has submitted that the Ashok Leyland Company, Shimla Autozone is a dealer and relationship between appellant and dealer is principal to principal basis and nothing contractual obligation in respect of the vehicle in question arises in the present case against the appellant/manufacture. He further submitted that the impugned order is bad in law and prays that the appeal of the appellant be allowed.

10. On the other hand, learned counsel of the respondent/complainant has submitted that the vehicle in question is in possession of the dealer/Ashok Leyland Company, Shimla Autozone Parel, Chamba, and down payment of Rs.2,15,000/- made by the complainant to the dealer has not been returned till date. He further submitted that the down payment of Rs.2,15,000/- be refunded to the complainant and prays for dismissal of the appeal.

11. Learned counsel on behalf of the appellants/dealer/Ashok Leyland Company has submitted that the vehicle in question is in possession of the dealer. She further submitted that the complainant vide affidavit Ext. OPW2&3 has undertaken to pay the usage charges of Rs.1,10,000/- and the same is to be deducted. Learned counsel further submitted that the appeal of the appellants/dealer be allowed and impugned order be set aside.

FINDINGS:

12. The admitted fact which emerges on record is that the complainant has purchased Ashok Leyland Tipper from the opposite party No.3/Ashok Leyland Company on 13.02.2017 for a sum of Rs.11,43,000/-.

13. It is also an admitted fact that for purchase of the said vehicle, the complainant took finance to the tune of Rs.9,28,000/- from Shri Ram Transport Finance Company. There is also no dispute that a sum of Rs.2,15,000/- was

paid by the complainant towards down payment to dealer/Ashok Leyland Company.

14. It is coming on record that as per the settlement between the parties, tipper in question was returned to the opposite party No.3/Ashok Leyland Company, which is still in possession of the dealer/Ashok Leyland company.

15. It is also coming on record that out of the total sale consideration amount of Rs.11,43,000/-, a sum of Rs.9,53,000/- was paid by the opposite parties to the financier Shriram Finance Company. However, the down payment of Rs.2,15,000/- which was paid by the complainant to the opposite parties has not been refunded/returned to him.

16. Plea of the opposite parties is that the complainant had undertaken to pay the user charges of the vehicle to the tune of Rs.1,10,000/- vide affidavit Ex. OPW2&3-1 to the opposite parties. However, affidavit sworn

by the complainant is not proved in accordance with law. Therefore, plea of the opposite parties that they were entitled to deduct Rs.1,10,000/- on account of usage of the vehicle is not tenable. Moreover, the opposite parties have not placed on record any conclusive proof to establish usage of the vehicle by the complainant.

17. Once the vehicle in question has been returned to the appellants/dealer, the dealer is under legal obligation to refund the down payment of Rs.2,15,000/- to the complainant.

18. The relationship between the manufacturer and the dealer is on principal to principal basis. The dealer has received the down payment of Rs.2,15,000/- from the complainant and the tipper in question has also been returned to the dealer/Ashok Leyland Company and the vehicle is still in possession of the dealer.

19. Since down payment of Rs.2,15,000/- was paid by the complainant to the appellants/dealer and appellant/manufacturee has not played any role in receiving the said payment, it is the dealer who is under legal obligation to return/refund the said down payment to the complainant. Facts on record do not indicate any involvement of the appellant/manufacturee in receiving the down payment from the complainant, therefore, it is the dealer/appellants to refund/return the said money to the complainant and joint and several liability cannot be attributed towards the manufacturee.

20. Consequently, appeal of the appellant/manufacturee is allowed.

21. So far as appeal of the appellants/dealer is concerned, it was the appellants/dealer who has received the down payment of Rs.2,15,000/- from the complainant which is an independent act on its part. Therefore, there is no merit

in the appeal filed by the appellants/dealer and same is dismissed accordingly.

22. The order of learned District Commission below is modified in the aforesaid terms.

23. Parties are left to bear their own costs.

24. Certified copy of order be transmitted to parties and their counsel free of costs strictly as per rules. Certified copy of order be sent to learned District Commission for compliance and file of State Commission be consigned to record room after due completion forthwith. Certified copy of this order be also placed on the connected appeal. The appeals are disposed of. Pending application(s) if any also disposed of.

Justice Inder Singh Mehta
President

R.K.Verma
Member

Manoj