

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, LUDHIANA.

Complaint No:195 dated 24.04.2019.

Date of decision: 21.08.2023.

Dr. Amarbir Singh, MD (Medicine) aged about 55 years son of Sh. Inderjit Singh, C/o. Jeevan Jot Hospital, Peerkhana Road, Khanna, Tehsil & Distt. Ludhiana.

.....Complainant

Versus

1. Volvo Auto India Pvt. Ltd., Tower A, Ground Floor, Unitech Cyber Park, Greenwood City, Sector 39, Gurgaon, Haryana 122001, through its Manager.
2. M/s. Auto Kashyap (India) Private Limited, 20, Okhla Industries Estate, New Delhi 110020, through its Proprietor/authorized Signatory.
3. M/s. Krishna Auto Sales, Village Khakat, Opp. Zimidara Dhaba, G.T. Road, Ludhiana-141120 through its Proprietor/authorized Signatory.Opposite parties

Complaint Under Section 12 of the Consumer Protection Act.**QUORUM:****SH. SANJEEV BATRA, PRESIDENT****SH. JASWINDER SINGH, MEMBER****COUNSEL FOR THE PARTIES:**

For complainant : Sh. Rajat Malhotra, Advocate.

For OP1 : Sh. Ankush Choudhary, Advocate.

For OP2 and OP3 : Exparte.

ORDER**PER JASWINDER SINGH, MEMBER**

1. Concisely put, the facts of the complaint are that the complainant is a qualified M.B.B.S., M.D. (Medicine) doctor and running Jeevan Jot Hospital, Peerkhana Road, Khanna for last many years. The complainant purchased a brand new car of Make VOLVO XC-5, D-5 2.4, Diesel Automatic Transmission vide invoice No.AKI-079 dated 07.03.2015 for a sum of Rs.45,82,716/-for his own use from opposite party No.2, who is authorized dealer of opposite party No.1. Opposite party No.1 being manufacturer, assures a warranty for three years on its cars from the date of vehicle is delivered to the first owner or for 60,000 miles, whichever comes first against any component failure attributable to faulty materials or workmanship during manufacturing and further provides that it shall be rectified free of charges by any of its authorized Volvo dealer. The complainant further stated that on persuasion of opposite parties, he also got the extended warranty for the car up to 06.03.2019 and paid additional payment. Extended warranty certificate was issued by opposite parties vide which the period of warranty was extended up to 06.03.2019 midnight. After the purchase of the car, the complainant has been regularly getting it serviced and maintaining it as per the schedule.

The complainant further stated that in the month of August 2016, while driving the car, he operated the door lock/unlock button in normal way by placing his arm on trim arm rest as per the requirement, but surprisingly, the said button went inwards towards the trim and sank therein and could not be relocated to its original position which was an apparent result of poor craftsmanship. The complainant visited opposite party No.3 M/s. Krishna Automobiles, an authorized dealer of opposite party No.1 at Chandigarh for redressal of said complaint and requested to replace the faulty switch but the representatives of dealer without carrying on any proper inspection of the faulty switch, declared that it is damaged by external force and it is not a manufacturing fault and shall not be replaced. The complainant told them about their warranty policy and requested to replace the switch but they refused to replace the same. According to the complainant, he prayed that as there is no mark or any scratch on the switch or trim which shows that it is manufacturing defect and poor quality material has been used and on repeated calls, the opposite parties finally agreed to replace the switch. On 02.09.2018, when the complainant was travelling with his family in the said car then its air conditioner suddenly stopped working and he had to drive the car with door glasses down and was embarrassed throughout the journey. He sent his car to opposite party No.3 at G.T. Road, Ludhiana who diagnosed that the car's evaporator needs replacement as it had developed a leakage. The complainant requested opposite parties to replace the same free of costs as it was a manufacturing defect but opposite party No.3 refused to do so rather told the complainant that if the snag is to be rectified then he has to pay the charges. So the complainant was compelled to pay an amount of Rs.85,992/- to opposite party No.3 to fix the snag developed in the air conditioner. After that the complainant persuaded the opposite parties to refund the charges paid by him for fixing snag in the air conditioner which occurred due to manufacturing defect but they made lame excuses by stating that the car is out of warranty. However, opposite party No.1 had already issued an extended warranty certificate on 13.04.2015 covering the car under extended warranty up to 06.03.2019 and moreover, the car has run only 45,805 KM but the opposite parties rejected the claim of the complainant and failed to accede to the genuine request of the complainant despite sending emails. The complainant has suffered mental agony, harassment etc. on account of unfair trade practice on the part of the opposite parties for which he is entitled for compensation. In the end, the complainant prayed for issuing direction to the opposite parties to refund Rs.85,992/- incurred by him on account of rectification of snag in air conditioner of the car and further to pay Rs.1,00,000/- as compensation and Rs.50,000/- as litigation expenses.

2. Upon notice, none appeared on behalf of opposite parties No.2 and 3 despite service and as such, opposite parties No.2 and 3 were proceeded against *ex parte* vide order dated 06.09.2019.

3. Even none turned up on behalf of opposite party No.1 despite service and as such, opposite party No.1 was proceeded against *ex parte* vide order dated 25.11.2020. However, later on, opposite party No.1 filed application for recalling the order dated 25.11.2020. The said application was allowed vide order dated 08.02.2022 by permitting opposite party No.1 to join the proceedings from the stage the complaint was pending at.

4. In support of his claim, the complainant tendered his affidavit Ex. CA in which he reiterated the allegations and the claim of compensation as stated in the complaint. The complainant also tendered documents Ex. C1 is the copy of tax invoice dated 26.09.2018 of Rs.56,964/- Ex. C2 is the copy of tax invoice dated 26.09.2018 of Rs.29,028/-, Ex. C3 is the copy of retail invoice dated 07.03.2015, Ex. C4 to Ex. C7 are the copies of receipts issued by Auto Kashyap India Pvt. Ltd., Ex. C8 is the copy of insurance policy, Ex. C9 is the copy of extended warranty certificate, Ex. C10 is the copy of warranty certificate, Ex. C11, Ex. C12, Ex. C27 to Ex. C31 are the copies of service and maintenance documents, Ex. C13 to Ex. C19 are the copies of warranty of the vehicle, Ex. C20 to Ex. C26 are the copies of emails and closed the evidence.

5. On the other hand, the counsel for opposite parties No.1 tendered affidavit Ex. OPA of Ms. Payal Khanna, General Manager, legal adviser of opposite party No.1, in which it has been averred that the complainant has no cause of action to file the present complaint. The complaint is not maintainable and is liable to be dismissed u/s.26 of Consumer Protection Act, 1986. It has been further averred that the vehicle has been used for almost 46,000 KM before any allegations of manufacturing defects were ever made. The vehicle was out of warranty period. There was no manufacturing defect in the vehicle and the opposite party has demanded charges for servicing the vehicle. The opposite party in its affidavit denied any deficiency in service on its part

and also denied the other allegations made by the complainant. Thereafter, the counsel for opposite party No.1 closed the evidence.

6. We have heard the arguments of the counsel for the parties and also gone through the complaint, affidavit and annexed documents and affidavit produced on record by both the parties.

7. The complainant, a Doctor by profession purchased a new car from opposite party No.2 on 07.03.2015 after paying the entire sale consideration. The opposite parties gave a warranty for three years for the car from the date of its purchase or for 60,000 miles whichever is earlier. The complainant also obtained an extended warranty vide its certificate Ex. C9 for a period of two years or up to 150000 KMs. Ex. C13 to Ex. C19 are the terms of warranty accorded by the opposite parties. After about 1½ year i.e. on 30.08.2016, the door lock/unlock button developed a snag and the complainant approached opposite party No.3 for the replacement of faulty switch. Opposite party No.3 initially was not inclined to do the needful but later on the switch was replaced.

8. On 02.09.2018, during the course of voyage, the air conditioner of the car stopped working and the car was brought to the workshop of opposite party No.3 where opposite party No.3 diagnosed car's evaporator. The snag was rectified but an amount of Rs.85,992/- was charged from the complainant by opposite party No.3. By that time, the car had covered a distance of 45,805 KM and was within warranty period but opposite party No.3 refused to provide service and the replacement without any charges. The complainant sent emails on 03.11.2018 and 08.11.2018 Ex. C20 and Ex. C21 respectively raising his grievance with regard to the defect and charging of repair/replacement charges by opposite party No.3. The first response came from the opposite parties on 13.11.2018 whereby they sought time to investigate into email dated 13.11.2018 Ex. C23. However, on the same day, they again responded vide email Ex. C24 stating therein that they have reviewed the relevant details pertaining to the car in consultation with their technical team along with their representatives at Krishna Volvo for necessary deliberation. It was further stated therein that car is out of warranty. On 26.11.2018, the opposite parties vide email Ex. C26 reiterated to the complainant that the car is out of warranty and the claim of the complainant cannot be accepted.

9. Perusal of extended warrantee Ex. C9 shows that it was issued on 13.04.2015 and its stipulated period of extended warranty certificate was from 07.03.2017 to 06.03.2019 midnight. It also provides that it is valid for two years or the upper KM limit of 150000. So it is crystal clear that when snag with regard to air conditioner was developed and rectified, the vehicle was well within the warranty period. The opposite parties instead of examining their record and warranty documents insisted upon the payment of charges putting the complainant under undue stress. Consequently, the complainant suffered mental agony as well and he was also forced to shell out an amount of Rs.85,992/- for which he was not under contractual obligation to make the payment. Even otherwise, the opposite parties have failed to refer to any terms or conditions of warranty agreement which excludes the payment of charges incurred upon the replacement/rectification of evaporator of the air conditioner system of the car.

10. As per the contentions of the complainant that the defect so rectified was a manufacturing defect, is devoid of any merit or substance. The complainant has not examined any auto/mechanical engineer to substantiate its claim and at that time the vehicle had already covered a distance about 46000

KMs. In **Honda Cars India Limited Vs Sudesh Berry & Others in Civil Appeal No.6802 of 2021 the Hon'ble Supreme Court of India** in para No.12 of its judgment has observed that *as the facts on record show that the car was used by respondents no.1 to 3 for more than 10 years, whereafter it suffered an accident. There is not an iota of material that the accident occurred as a result of manufacturing defect. If there be any deficiency in service by the dealer or the authorized centre in rendering assistance for repairs of the vehicle, the manufacturer of the vehicle cannot be held liable. The law on the point of very clear by the decision of this court in TATA Motors Ltd. V. Antonio Paulo Vaz & Another, 2021 SCC Online SC 125.* In the given set of facts and circumstances, it would be just and appropriate if opposite party No.2 and 3 are directed to refund the amount of Rs.85,992/- to the complainant with interest @8% per annum from the date of order till date of actual payment along with composite costs of Rs.10,000/-. The complaint as against opposite party No.1 is dismissed.

11. As a sequel of above discussion, the complaint is partly allowed with direction to opposite party No.2 and 3 to refund the amount of Rs.85,992/- to the complainant with interest @8% per annum from the date of order till date of actual payment. Opposite party No.2 and 3 shall further pay composite costs of Rs.10,000/- (Rupees Ten Thousand only) to the complainant. Compliance of the above order be made within 30 days from the date of receipt of copy of order. However, the complaint as against opposite party No.1 is hereby dismissed. Copies of order be supplied to parties free of costs as per rules. File be indexed and consigned to record room.

12. Due to huge pendency of cases, the complaint could not be decided within statutory period.

(Jaswinder Singh)
Member

(Sanjeev Batra)
President

Announced in Open Commission.

Dated:21.08.2023.

Gobind Ram.

Dr. Amarbir Singh Vs Volvo Auto India Pvt. Ltd.

CC/19/195

Present: Sh. Rajat Malhotra, Advocate for complainants.

Sh. Ankush Choudhary, Advocate for OP1.

OP2 and OP3 exparte.

Arguments heard. Vide separate detailed order of today, the complaint is partly allowed with direction to opposite party No.2 and 3 to refund the amount of Rs.85,992/- to the complainant with interest @8% per annum from the date of order till date of actual payment. Opposite party No.2 and 3 shall further pay composite costs of Rs.10,000/- (Rupees Ten Thousand only) to the complainant. Compliance of the above order be made within 30 days from the date of receipt of copy of order. However, the complaint as against opposite party No.1 is hereby dismissed. Copies of order be supplied to parties free of costs as per rules. File be indexed and consigned to record room.

(Jaswinder Singh)
Member

(Sanjeev Batra)
President

Announced in Open Commission.

Dated:21.08.2023.

Gobind Ram.