

IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

30th day of July 2022

CC 717/15 filed on 21/11/2015

Complainant : Soudhamini P.P., Thottiparambil House,
Chowoor, Thrissur.
(By Adv. A.D. Benny, Thrissur)

Opposite Parties : 1) Kairali Ford, Kerala Cars Pvt. Ltd.,
Rep. by Managing Director, Guruvayoor Road,
Puzhakkal, Thrissur – 680 003.
(OP 1 By Advs. P. Fazil, Jacob O Raphael etc.,
Ernakulam)

2) Ford India Pvt. Ltd., Block 1 B, 1st Floor,
RMZ Millenia Business Park, 143, Dr. MGR Road,
North Veeranam Salai, Perumgudi,
Chennai – 600 096. Rep. by Managing Director.
(OP 2 By Adv. Santhosh Mathew, Arun Thomas etc.,
Kochi)

ORDER

By Sri. Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under section 12 (1) of the Consumer Protection Act, 1986. The complainant purchased a "Ford Classic" Diesel car from the 1st opposite party paying a price of Rs.8,94,876/-. The car was delivered on 05/11/14. The 2nd opposite party is the manufacturer of the car in question. The opposite parties are alleged to have promised the complainant that the car in question provides a mileage above 32 km/ L of Diesel. Allegedly being lured by this promise, the complainant states to have purchased the car. But she (the complainant) experientially gets a mileage of 16 km/L only. Moreover, one of the tyres of the car underwent bulging, upon the car covering 10,000 Kilo

meters. The complainant who has statedly been in ill-health, claims to have resultantly undergone financial loss, agony and hardship. The lawyer notice issued by the complainant statedly elicited no result. Hence the complaint. The complainant prays for an order directing the opposite parties to refund the invoice cost of the car along with other reliefs of compensation and costs.

2) NOTICE :

Having been noticed by the Commission, the opposite parties contested and filed their version.

3) Version of the Opposite parties :

1st Opposite Party : The 1st opposite party states that the mileage of a vehicle varies with driving conditions, nature and texture of road, prevalence of traffic and other related conditions etc. They also contend that the affected tyre was inspected by the tyre manufacturer concerned and reported that the defect of bulging was not attributed to any manufacturing defect, but caused due to road hazards.

2nd Opposite Party : The 2nd opposite party avers that they do not claim any mileage for the cars manufactured by them, but the reporting of mileage is conducted by third party agency based on their own test. The 2nd opposite party also contends that the mileage of a car is dependent on the driving conditions of the road, driving habits, tyre pressure, quality of fuel etc. In respect of the bulging of the tyre they argue that the liability of the tyre defects lies with the tyre manufacturer. They also state that the legal relationship between the 1st opposite party manufacturer and the 2nd opposite party dealer is on a principal to principal basis and hence each opposite party is liable for its own actions. It is also their stance that they have no privity of contact with the complainant. They also argue that the matter being complex, the case be referred to civil court.

4) Evidence :

The complainant produced documental evidence that had been marked Exts. P1 to P5, apart from affidavit and notes of argument. The complainant has also made an application to appoint an Expert Commissioner to ascertain the defects of the car, consequent to which, the Commission appointed an Expert Commissioner for the said purpose. The report submitted by the said Expert Commissioner is marked Ext. C1. The 1st & the 2nd opposite parties produced documentary evidence that had been marked Exts. R1 to R3 and Ext. R4 to R7 respectively apart from version, affidavit and notes of arguments.

5) Deliberation of evidence and facts of the case :

The Commission has scrupulously delved into the facts and evidence of the case. Ext. P1 is the Customer statement of Account comprising the split up of the price details of the car in question issued infavour of the complainant by the 1st opposite party. Ext. P2 is the 5th page of the leaflet published by the opposite parties that described the performance of the car in question. Ext. P3 is copy of the lawyer notice issued to the opposite parties. Ext. P4 (series) comprise the postal acknowledgement cards in respect of the 1st and the 2nd opposite parties. Ext. P5 is the brochure with the features of mileage of the car in question. Ext. C1 is the report submitted by the Expert Commissioner appointed by the Commission which evaluated the mileage performance of the car and also describes the defects of the tyre. Ext. R1 is copy of the Spot Inspection Report dtd. 29/09/15 from the tyre manufacturer namely Good Year India Ltd. Ext. R2 is print out of the email communication trail dtd. 29/09/15 between the 1st & the 2nd opposite parties. Ext. R3 is print out of the email dtd.05/10/15 sent by the 1st opposite party to the complainant's son. Ext. R4 is copy of the Resolution passed by the Board of Directors of the 2nd opposite party authorising one Mr. Thapos Kumar Moitra to sign legal papers, affidavits and documents on behalf of 2nd opposite party. Ext. R5 (SP) is copy of the tyre

spot inspection report (copy of Ext. R1). Ext. R6 is copy of Warranty and Service Guide in respect of the car. Ext. R7 is copy of page No.13 of the dealership agreement.

6) Points of deliberation :

(i) Whether the complainant succeeded in proving the allegations levelled against the opposite parties ?

If yes,

(ii) Whether the act of the opposite parties is tantamount to unfair trade practice ?

(iii) Whether the complainant is entitled to receive any compensation from the opposite parties ? If so its quantum ?

(iv) Costs ?

7) Point No.(i)

Both the opposite parties do not dispute the complainant's purchase of the car in question. The Exts. R1 / R5, R2, R3 documents and Ext. C1 report unanimously mention that the registration number of the car in question is KL 8 BE 3738.

Though the Ext. C1 Report states that the tyre in question is bulged and that using the same in a vehicle is hardly safe at all, does not affirm whether the bulging of the tyre is attributed to any manufacturing defect or any road hazards. In the absence of such an affirmation, the Commission is not in a position to consider the issue of the alleged manufacturing defect or the inferior quality of the tyre in question.

Ext. P2 leaflet clearly states that "the all new Ford Classic Titanium is equipped with Duratec petrol engine which gives a mileage of more than 21 Kmpl* on road and its Duratorq Diesel engine gives a mileage of more than 32 Kmpl*. This means that the all new Ford Classis Titanium is highly efficient, gives great mileage and hence, is very economical". By Ext. P5 Brochure the

opposite parties further endorse their statement in Ext. P2 Leaflet with the words "1.6 L Duratec Petrol & 1.4 L Duratorq Diesel (TDCi). Hit the road with confidence. These state of the art engines deliver class leading fuel efficiency so that you can go the extra mile. Fuel Economy Petrol 21.27 kmpl**, Fuel economy Diesel 32.38 kmpl **. ** As tested by Autocar Cross Country Drive".

Ext. C1 report submitted by the Expert Commissioner explicitly reveals that the approximate mileage given by the car during the running test conducted by him in presence of the parties concerned is 19.6 km/L. Both the opposite parties neither disputed the veracity of, nor disowned Ext. P2 & P5 documents. The 2nd opposite party avers that the said reporting of mileage is conducted by a third party agency, the name of which is "Auto Car Cross Country Drive" as was noted with (**) in Ext. P5 brochure. As long as the manufacturers state the car's mileage in the brochure or the leaflet that they publish, they are endorsing the same and claiming the quoted feature of mileage for their vehicles which the consumers bonafidely believe. Such belief regarding mileage will certainly influence the buyer's decision in respect of his choice of vehicle. Every prospective buyer of a car compares the advertisement, brochures, leaflets etc., of different vehicles of various manufacturers and features described therein influence his final decision relating to the choice of the vehicle. Once such statement regarding mileage is incorporated in the brochure or the leaflet that they publish, the manufacturer cannot shirk off their responsibility towards their consumers, under the shield of the argument that the mileage test is conducted by a third party agency. At the same time the conditions under which the test was conducted by the 3rd party agency are not mentioned in the Ext. P2 brochure and Ext. P5 leaflet. A mere mentioning like "third party agency" does not impart clarity to the consumer as to the conditions under which the stated mileage is accessible and such a statement is certainly a misleading one.



The common contention of both the opposite parties is that the mileage of a car varies with the driving conditions, nature and texture of road, quality of fuel etc. This contention is not acceptable as the conditions under which the mileage stated in Ext. P2 & P5 documents are not mentioned therein. In such a case they ought to have explicitly detailed in Ext. P2 & P5 documents the conditions under which the said mileage holds good and in the absence of which the said contention of the opposite parties becomes unilateral.

The 1st opposite party further contends that the running test conducted by the Expert Commissioner was not under standard conditions. A knowledgeable and skilled Expert Commissioner as the one appointed by the Commission in the case at hand (who is Ph.D holding Associated Professor of Mechanical Engineering in Government Engineering College, Thrissur, Kerala), cannot be presumed to have arrived at conclusions upon witnessing and evaluating the performance of the car under conditions that are far from the ideal or standard ones. Any adverse conditions worth mentioning should certainly have been noted by him in his report. For instance, the Expert Commissioner had not failed to mention in his Ext. C1 Report that the air-conditioner was in the "on" position at the time of conducting the test. It also merits special mention that the Expert Commissioner has specifically noted in the Ext. C1 report that he had considered the Mannuthy-Angamaly National Highway for conducting the running test, with a view to maintaining the uniform road condition. It is also noted therein that the constant speed of 55-60 km/hr was maintained during the running test. Hence the contentions to the contrary raised by the 1st opposite party are unfounded.

The deviation from the stated mileage is; $32.38 - 19.6 = 12.78$ km/L (approximately). The deviation is about 40 %, which means the actual mileage that a consumer gets is about 40% less than the one stated in the Ext. P2 & P5 documents. No stretch of imagination can make a man of reasonable prudence believe the justifications and contentions put forth by the opposite parties to

digest the wide gap between the actual and the claimed mileage of the car in question. Under the circumstances and the reasons elaborated supra, we have every reason to believe that the opposite parties miserably failed to refute the allegations in respect of their mileage claims, levelled against them by the complainant.

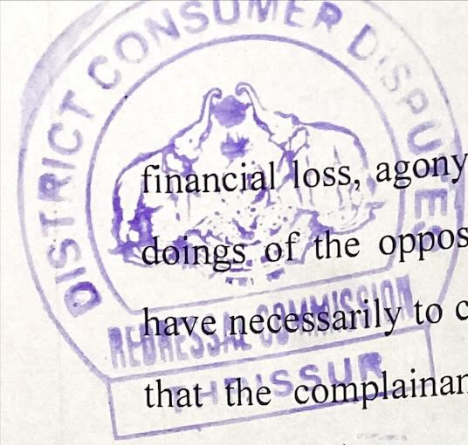
The other contentions of the 2nd opposite party regarding lack of privity of contract between them and the complainant and the one relating to their relationship with the 1st opposite party are also not relevant with respect to the claims made by the complainant. Whatever be the relationship between the 1st & the 2nd opposite parties, they are one and the same, so far as any claim made in respect of the quality or features of the products manufactured by one of them and sold by the other.

We are therefore of the considered view that the complainant has succeeded in proving his allegation that the opposite parties' statement regarding mileage of the car in question is deceptive. The Hon'ble National Commission expressed the same view by order dtd. 02nd March 2020 in *Tata Motors Ltd. Vs Pradipta Kundu and another* and also in *Bajaj Auto Ltd. & another Vs. Pankaj Kumar [IV (2006) 267 NC]*.

8) Point No (ii) (iii) (iv) :

As elaborated supra, point No.(i) is proved in favour of the complainant. The opposite parties' act of having highlighted an exaggerated mileage in brochure or leaflet, which has no comparison or proximity with the actuals, to promote the sale of their cars, is certainly deceptive and is undoubtedly an unfair trade practice. It is at the same time a misleading representation / advertisement concerning the need for, or the usefulness of the car in question.

We are convinced that the opposite parties have adopted an unfair trade practice in having stated a deceptive mileage for the car in question. Needless to say that the complainant taken in by such an unfair trade practice on the part of the opposite parties, would be deeply dissatisfied and that the consequent



financial loss, agony and hardship inflicted on her by the misdeeds and wrong doings of the opposite parties, would be immeasurable. The opposite parties have necessarily to compensate the complainant. We are of the considered view that the complainant is entitled to receive from opposite parties a sum of Rs.1,50,000/- towards compensation for the financial loss inflicted on her, a sum of Rs.1,50,000/- towards compensation for the agony and hardship she underwent, and a sum of Rs.10,000/- towards cost of litigation.

In the result, the opposite parties are jointly and severally directed to

a) pay the complainant a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only)

towards compensation for the financial loss inflicted on her,

b) pay the complainant a sum of Rs.1,50,000/- (Rupees One lakh fifty thousand only)

towards compensation for the agony and hardship she underwent, and

c) pay the complainant a sum of Rs.10,000/- (Rupees Ten thousand only) towards cost of litigation,

all with 9% interest p.a. from the date of filing of the complaint till the date of realisation. The opposite parties shall comply with the above direction within 30 days of receipt of a copy of this order.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 30th day of July 2022.

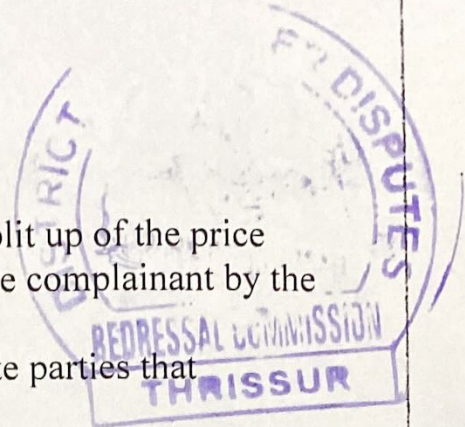
Sd/-
Sreeja S.
Member

Sd/-
Ram Mohan R
Member

Sd/-
C. T. Sabu
President

Complainant's Exhibits :

Appendix



- Ext. P1 Customer statement of Account comprising the split up of the price details of the car in question issued infavour of the complainant by the 1st opposite party.
- Ext. P2 the 5th page of the leaflet published by the opposite parties that described the performance of the car in question.
- Ext. P3 copy of the lawyer notice issued to the opposite parties.
- Ext. P4 (series) comprise the postal acknowledgement cards in respect of the 1st and 2nd opposite parties.
- Ext. P5 the brochure with the features of mileage of the car in question.

Ext. C1 Expert Commissioners Report.

1st Opposite Party's Evidences :

- Ext. R1 copy of the Spot Inspection Report dtd. 29/09/15 from the tyre manufacturer namely Good Year India Ltd.
- Ext. R2 print out of the email communication trail dtd. 29/09/15 between the 1st & 2nd opposite parties.
- Ext. R3 print out of the email dtd.05/10/15 sent by the 1st opposite party to the complainant's son.

2nd Opposite Party's Evidences :

- Ext. R4 copy of the Resolution passed by the Board of Directors of the 2nd opposite party authorising one Mr. Thapos Kumar Moitra to sign legal papers, affidavits and documents on behalf of 2nd opposite party.
- Ext. R5 (SP) copy of the tyre spot inspection report (copy of Ext. R1).
- Ext. R6 copy of Warranty and Service Guide in respect of the car.
- Ext. R7 copy of page No.13 of the dealership agreement.

Id/-
Member

Kandam
22-11-22
Assistant Registrar

[Signature]

Free certified copy DCDRS Thrissur

//True copy//

Serial no of the application.....
 Date of receipt of Application.....
 Name of the Applicant.....
 Date of Disposal... 30/11/22
 Date of Preparation of copy... 22/11/22
 Date of dispatch of free certified copy of order
 By Hand... 25/11/22
 By Post.....

Kandam
 Assistant Registrar
 Consumer Disputes Redressal Commission
 Ayyanthole, Thrissur-3
 0487-2361100