

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 29.05.2014

Date of hearing: 22.09.2022

Date of Decision: 23.12.2022

FIRST APPEAL NO.- 551/2014

IN THE MATTER OF

MARUTI SUZUKI INDIA LTD.,

Plot no. 1, Nelson Mandela Road,

Vasant Kunj, New Delhi-110070.

(Through: M/s Singhania & Associates)

...Appellant

VERSUS

1. MR. RAMINDER SINGH,

S/o Mr. Surinder Singh,

R/o 4/19, Ground Floor,

East Punjabi Bagh, New Delhi-110026.

(Through: Mr. Manish Raghav & Nikhil Singh, Advocate)

2. THE DIRECTOR,

KRISH AUTOMOBILE PVT. LTD.,

Mamraj Majesty Hall,

Plot No. 2, Road no. 43,

Guru Harkrishan Marg,

Pritam Pura, Delhi-110024.

(Through: Mr. Subhash Chawla, Advocate)

...Respondents

CORAM:

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)**

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Vipin Singhanian & Ms. Mehga Shaji, counsel for the Appellant, (Maruti Suzuki)

Mr. Manish Raghav, counsel for Respondent no. 1, (Raminder Singh)

Mr. Subhash Chawla, counsel for Respondent no. 2, (Krish Auto)

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,

PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are:

“On 8.2.2008, the complainant had purchased a car model ZEN Estilo bearing registration no. DL 8CP 1395 from OP2 for a sum of Rs. 3,41,000/-. OP1 is the manufacturer of the car in question. It is alleged by the complainant that from day one there was some noise in the gear box and transmission and he had brought this fact to the notice of Sh. Akhlesh GM of OP2 but he did not take any corrective measures. It is alleged that in the job card dated 8.3.2008, it has been recorded that there was noise in the gear box. It is also alleged that on 27.4.2008, the father of the complainant again contacted Sh. Akhlesh GM of OP2 and reported of the noise in the gear box. However, after checking the car he was told that it was OK. It is alleged that on 28.4.2008, the father of the complainant again visited OP2 but was not allowed to meet the director. However, an assurance was given on telephone that the problem will be solved after a call is made to the officials of OP1.

The complainant then sent a letter dated 9/10 .5.2008 to the OPs requesting for replacement of the defective car. It is alleged that the car was thoroughly inspected by Sh. Anoop Gupta TSM of M/s Maruti Suzuki Pvt. Ltd, 15 Barakhamba Road, New Delhi who had also reported excessive operational noise from transmission as communicated vide letter dated 24.5.2008. The complainant has alleged that the inspection letter also shows that there was some latent manufacturing defect in the vehicle in question. Since the complainant's grievance was not redressed he sent a registered letter dated grievance 6.6.2008 to the Ops again seeking replacement of the defective car. He received a letter dated 9.6.2008 from the MD of OP1 directing the regional office, Barakhamba road, New Delhi and service division Gurgaon for necessary action. But to no effect. Another letter dated 7.7.2008 from the complainant also failed to get any response.”

2. The District Commission after taking into consideration the material available on record passed the order dated **26.03.2014**, whereby it held as under:

“Some of the facts are not in dispute. The vehicle in question is manufactured by OP1 and was purchased by the complainant from its authorized dealer OP2 on 8/2/2008. It is the case of the complainant that the vehicle suffered from a noise in the gear box from the very beginning and he had brought this to the notice of OPs but no corrective steps were taken. This has been denied by the OPS. However, the OPs have admitted that the problem of Noise in Gear and transmission was reported at the time of the first free service on 8/3/2008. There is sufficient on record that the said problem is still persisting and has not been remedied. The

vehicle in question was thoroughly checked by the sh. Anoop Gupta, Territory Service Manager of OP1. He had also found excessive noise in the gear box and transmission which is evident from the letter dated 24/5/2008 addressed to the complainant by OP2 (M/s Krish Automotors Pvt. Ltd). It inter-alia reads :-

Sub: Excessive operational noise from transmission.

Respected Sir,

This is reference to your complaint received through your Fax. Regarding problem faced in your Maruti Suzuki-Estilo (DL 8C 1395). We have Anformed our regional office, Mr. Apoop Gupta (TSM) checked your vehicle and suspected excessive operational noise from transmission. Mr. Anoop Gupta (TSH) already informed you for bring your vehicle at our workshop for our necessary action.

Thanking you,

Yours Truly

sd/-

General Manager

This problem thereafter persisted even after the second service which was conducted on 1/9/2008. The third free service of the vehicle in question was undertaken at M/s Magic Auto another authorized dealer of OP1. The OPS have taken a stand that no problem regarding the noise in gear and transmission was reported or found at the said time. It is also the case of the OPS that the complainant had signed a satisfaction note on which strong reliance was placed by them. The complainant however had moved an application U/s 340 CrPc claiming that the satisfaction

note reliance had been placed by the OPS was forged and fabricated. The complainant had led evidence to the effect that he was not physically present in Delhi on the date the alleged satisfaction note is purported to have been signed. He had also filed an affidavit of his father wherein he had also deposed that the satisfaction note was not signed by him. In these circumstances we had asked the OP to produce the original satisfaction note before us. The OPs took several dates for production of the original satisfaction note and then made a statement on 12.10.2013 wherein it was stated that the original satisfaction note was not traceable. The statement was made by Sh. Vikran Mehra, workshop manager of M/s Magic Auto and reads as under:-

I had been directed to bring the original job card and satisfactory note dated 12/1/2009 in the forum today.

We have looked for the record at our place The original job card and satisfactory note is not traceable.

It is therefore, clear that the OPs had resorted to concoction and falsehood. They had taken false stands before us. We are inclined to hold that no satisfaction note as alleged by the OPs was recorded by the complainant, A copy of the satisfactory note appears to have been manufactured in order to show that the complainant had made a false complainant before us. Since the job card prepared at the time of the third service was also not produced, we are inclined to hold that in the said job card as well the problem of noise in the gear box and transmission had been specifically recorded.

The fourth service was got done by the complainant at the workshop managed by OP2. The Job card prepared at the said

also shows the problem of noise in the gear box and transmission. Indeed, the job sheet further shows that the problem of noise in the gear box had progressed to the engine as well. At this stage, OP2 sought the permission of the complainant to dismantle the engine and the gear box in order to evaluate the problem and determine its origin. The complainant had at this stage moved another application showing that the vehicle in question had continued with the said problem which had further aggravated. In reply to the said application, OP2: had admitted that it had sought the permission of the complainant to dismantle the engine / gear box but the said permission was refused.

*An engine is the most important part in a car. The engine is generally disassembled/ opened after the vehicle has run for more than 1/2 Lakh Kms. The complainant was, therefore, well within his rights to refuse the disassembly/ opening of the engine and the gear box. The history of the vehicle in question, therefore, shows that it had suffered from noise problem in the gear box from the very beginning and despite the vehicle being taken to the authorized workshop of the OPS, the problem had not been remedied but had still persisted and progressed to the other parts of the vehicle. In our considered opinion the vehicle in question was defective and had some inherent problem the same. The question for our consideration is as to whether the complainant was justified in seeking its replacement. The answer is provided by a judgment of the National Commission reported as **Hyundai Motors India Ltd V's Affiliated East West Press I (2008) CRJ 19 NC** wherein in similar circumstances the commission observed as under:-*

The question which arises for consideration in this case is luxury car namely Accent Car CRD diesel model, gives trouble within if a one or two months of its purchase, would the consumer be satisfied with such a car? Whether the multi-national company such a car, Le justified in not replacing the manufacturing car or refunding purchase price and instead engaging in protracted litigation.?

1. In our view, if a brand new car gives trouble within a few days of its purchase, the consumer would be dissatisfied. such cases, the manufacturing company Further, in not justified in protracting litigation merely because it has the money power.

2. Further a person who purchases a vehicle may be a luxury accent car or a small car, would not be satisfied if it is a defective vehicle. That the defect may not be a major one but the consumer loses satisfaction of having a new car. That loss of satisfaction would be much more in a case when the person buys the vehicle with his hard-earned money. Unfortunately, we have not developed the tendency of accepting the defects or defaults, By some measure or means, the tendency to accept the defects or defaults is required to be encouraged. Otherwise, delay in disposal of such cases defeats the rights and the consumer geta frustrated. On occasions, litigation is dragged on for taking undue advantage of delay in disposal. The commission held as under:-

Undisputedly. all the multi-national companies have adopted aggressive marketing for the sale of vehicles. Unfortunately, we have developed a practice/ tendency of not admitting the defects in the vehicle and not replacing the same without contest. In other countries even if there is aggressive marketing, defective vehicles are easily replaced. That practice is required to be adopted at least, by the big companies like the petitioner herein. Instead of disputing the undisputed facts, the companies should resolve the matter by replacing the vehicles.

Taking que from the aforesaid judgment, and holding that the OPs were deficient in rendering service to the complainant we direct the Ops jointly and severally as under:-

1. Pay to the complainant a sum of Rs. 3,41,000/- Rs. Three Lakhs Forty One Thousands Only) along with interest @ 10 p.a. from the date of institution of this complaint i.e. 13.8.2008 till payment.

2. Pay to the complainant a sum of Rs. 50,000/- as compensation for pain and agony suffered by him.

3. Pay to the complainant a sum of Rs. 5,000/- as cost of litigation.”

3. Aggrieved by the aforesaid Judgment of the District Commission, the Appellant/Opposite Party no. 1 has preferred the present Appeal contending that the District Commission has erred in establishing the deficiency on its part as the Respondent and Appellant is bound by the terms of warranty enumerated in owner's manual and it provides for only free replacement of defective parts. The counsel also contended that the onus is upon the Respondent no. 1 to prove that the subject car sustained

manufacturing defect. Pressing the aforesaid contention, the Appellant prayed for setting aside the impugned judgment passed by the District Commission.

4. The Respondents, on the other hand, filed separate reply to the present appeal wherein, they denied all the allegations of the Appellant and submitted that there is no error in the impugned judgment as the entire material available on record was properly scrutinized before passing the said judgment.
5. The Appellant has also filed the list of judgment in order to support his case which are as follows:
 - a. *Maruti Udyog Ltd. Vs Hasmukh Lakshnichand & Anr, 3(2009) CPJ 229 (NC).*
 - b. *Gopal Aggarwal Vs Metro Motors & Anr, 2019 SCC Online NCDRC 754.*
 - c. *Ankur Jain Vs M/s Skoda Auto India P. Ltd & Ors, SCDRC (Delhi) In Cc No. 377 of 2011.*
 - d. *Ravneet Singh Bagga Vs KLM Royal Dutch Airlines, (2000) 1 SCC 66.*
 - e. *Branch Manager, Indigo Airlines, Kolkata & Anr. Vs Kalpana Rani Debbarma & Ors. (2020) 9 SCC 424.*
 - f. *Mahindra & Mahindra Ltd Vs B.D Thakurdesai, 1993 2 CPJ(NC) 225.*
 - g. *Rakesh Kumar Vs Shimla Automobile Private Ltd., SCC OnLine NCDRC 478.*
 - h. *Sushila Automobiles Pvt. Ltd. Vs Dr. Birendra Narain Prasad Doranda 2010 SCC OnLine NCDRC 144.*
6. We have perused the material available on record and heard the counsel for both the parties.

7. The *main question* for consideration before us is *whether the District Commission was right in establishing deficiency of service on the part of Appellant.*
8. On perusal of record, we find that the Respondent no. 1 faced the issue of fault in the gear box of the car, right from the first service and the same has been recorded in the job card which was prepared during the first service. Also, the Appellant and the Respondent no. 2 have admitted that the problem of noise in Gear box and transmission was reported at the time of the first free service i.e. on 08.03.2008.
9. Furthermore, despite having the car serviced more than four times, there is enough evidence on record from which it is clear that the car purchased by the Complainant (Respondent no. 1 herein) was faulty since inception. This fact is borne out from the service record. It is also important to note that the authorized service station of Respondent no. 2 sought permission of the Complainant/Respondent no. 1 to disassemble the engine and gearbox in order to assess the issue and pinpoint its cause. However, the Respondent no. 1 specifically refused to give permission for dismantling the Engine of the subject car, since the car was only one and a half year old at that time.
10. Therefore, the District Commission was right in establishing the Deficiency of service on the part of Appellant as there was sufficient evidence in order to believe that the subject car had manufacturing defects which could not be repaired by the Respondent no. 2 even after servicing the car for more than four times.
11. Also, the Appellant before the District Commission as well as before this Commission failed to show any substantive evidence that the subject car was not sustained with the manufacturing defect.

12. Therefore, we do not find any reasons to reverse the findings of the District Commission. Consequently, *we uphold the order dated 26.03.2014, passed by the District Consumer Disputes Redressal Commission V, Shalimar Bagh, New Delhi – 110088. Consequently, the present Appeal stands dismissed with no order as to costs.*
13. Application(s) pending, if any, stand disposed of in terms of the aforesaid Judgment.
14. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
15. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On:
23.12.2022