



Complaint filed on : 13.11.2014

**IN THE TAMIL NADU STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, CHENNAI.**

Present: **Hon'ble Thiru Justice R.SUBBIAH ... PRESIDENT**
Thiru.R VENKATESAPERUMAL ... MEMBER

C.C. No.171 of 2014

Orders pronounced on: 22.11.2022

Saravana Stores Tex,
rep. by its Managing Partner R.Sabapathy,
42-45, Ranganathan Street,
T.Nagar, Chennai-600 017.

... Complainant

vs.

1. Audi - Chennai,
rep. by its Head - After Sales,
No.535, Anna Salai,
Nandanam,
Chennai 600 035.

2. Audi India,
Volkswagen Group Sales
India Pvt. Ltd.,
rep. by its Managing Director,
3rd & 4th Floor, Silver Utopia,
Cardinal Gracious Road,
Chakala - Andheri East,
Mumbai 400 093.

3. Jubilant Motorworks Private Limited,
rep. by its Vice-President (Operations),
D-6, South Phase,
Ambattur Industrial Estate,
Ambattur, Chennai 600 058.

4. Jubilant Motors,
 (A Division of Jubilant Enpo P. Ltd.),
 rep. by its Manager,
 5/1, Beratana Agrahara,
 15th KM Hosur Main Road,
 Bangalore 560 100.

... Opposite Parties.

✓ For Complainant : M/s.Sanjay Pinto
 For OP No.2 : M/s.A.R.Ramanathan
 For other OPs : M/s.K.Ravikumar

This Complaint came up for final hearing on 16.09.2022 and, after hearing the arguments of the counsels for the parties and perusing the materials on record and having stood over for consideration till this day, this Commission passes the following:-

ORDER

R.Subbiah, J. – President.

Alleging that the vehicle/Audi Car Q 7 3.0 TDI Quattro, bearing Registration No.TN-09 BD-3777, that was sold to him by the OPs, had manufacturing defect in its brake-mechanism, due to which, it suffered brake-failure on 20.07.2014, causing great panic and trauma to the occupants as they were nearly pushed to the verge of death, the complainant herein seeks this Commission to direct the



OPs to replace the defective vehicle and to pay to him a sum of Rs.30 lakh as compensation for the trauma, pain, mental agony, etc. caused to them by the OPs' alleged negligence & gross deficiency in service.

2. The case of the complainant, in brief, is as follows:-

On 21.01.2009, the complainant purchased a high-end luxury Audi Car-Q7 3.0 TDI Quattro in the name of his Firm/Saravana Stores Tex, from OP Nos.1 and 2 through their Authorized Dealers/OP Nos.3 and 4. The said car, Calla White in Colour, bears Engine No.CAS 064938 & Chassis No.WAUZK84L29D026445 and its Registration Number is TN-09 BD-3777. The Manufacturer of the Car/OP No.2, through their Brochure, very highly claims about the unique Braking System of the Car that it has *dual circuit, diagonally-split braking system, anti-lock system ABS with electronic brake force distribution (EBD), Electronic Dierential Lock (EDL), Traction Control ASR, Electronic Stablisation Control (ESC) with hydraulic brake assist,*

ventilated 18-inch front disk brakes and ventilated rear 17-inch disc brakes. It was only under a legitimate belief that the car is loaded with lofty features of safety and it would be extremely safe to travel therein as projected by the carmaker, the complainant purchased it at a price that is ten times more than that of an average car in the Market.

While so, on 20.07.2014, when the complainant was travelling in the car in question from Chennai to Yercaud along with his family members, at about 11 PM., it suffered brake-failure near the Kallakurichi Toll-Gate, Tamil Nadu, endangering their lives at risk that has virtually driven them to a great shock, tension and mental agony and, it was with great difficulty, the Driver brought the vehicle to a halt. The incident was immediately intimated to the 3rd OP/Service Centre which informed the complainant that the car would be towed to their Workshop for repair.

Only a few months ago, that was in November, 2013, the Car was serviced at the Workshop of the 3rd OP for *Brake-Pad Warning Glowing*. The said OP claimed that they had removed and re-installed the front and rear brake



pads and discs and assured that there would be no problem with the braking mechanism of the Car and further stated that the next servicing was due only on 23.10.2014. For the repairs done, the 3rd OP raised a bill for a big sum of Rs.2,47,051/- which was paid by way of cheque No.130038, dated 11.11.2013.

Although the next Service of the car was due only during October-2014, even prior thereto, during July, 2014 itself, it developed further snags, whereupon, just two weeks before the Brake Failure incident that had taken place on 20.7.2014, the Car was sent for servicing to the 3rd OP on 05.07.2014, however, the said OP was evidently negligent and failed to pick up the deterioration and inherent flaws in the braking system of the car. The 3rd OP had claimed that their service team had done its best to delight the complainant and about its policy to extremely satisfy its customers, but, in sharp contrast, even after being serviced, during the same month, on 20.07.2014, the vehicle has suffered brake failure, endangering the lives of the occupants. The brake failure is clearly evident from the

Vehicle Condition Report Form, dated 21.07.2014, under Case No.2514121950 & S. No.11915, issued by none else than the 3rd OP only reflects that the OPs have admitted the negligence and service deficiency that has led to the brake failure. The pleas of the complainant with the OPs to replace the dangerous car, which is clearly not in a road worthy condition, evoked no response and hence, a legal notice, dated 13.08.2014, was sent, demanding replacement of the defective vehicle and claiming damages, however, the endeavour of the OPs is only to escape and wriggle out of the liability. Hence, the present complaint, seeking for issuance of the directions, as aforementioned.

3. OP Nos.1, 3 and 4 have filed a common written version, inter alia, stating thus:-

These OPs are different entities from the 2nd OP, who is the Manufacturer of Audi Cars. The complaint filed by the individual in the capacity of Managing Partner of a Firm clearly shows that the transaction between the parties



is on commercial basis and, as such, the present consumer complaint cannot be maintained.

The incident said to have been encountered by the complainant on 20.07.2014 is not true and, on the said date, the vehicle was brought in a Flatbed Truck and was found to be having brake booster issue, whereupon, it was informed to the customer that the repairs are covered under warranty and the expected time for arrival of the ordered parts was 20 days. Even though the Vehicle was very much ready on 16.08.2014 itself, despite several intimations, letters, emails, etc., the complainant did not turn up to take delivery of the vehicle.

The averments in the complaint that the vehicle was serviced at the workshop of the 3rd OP on 12.11.2013, that there was a report of *Brake-pad Warning Indicator Glowing*, that a sum of Rs.2,47,051/- was paid against the service bill, that the next service of the vehicle was due only on 23.10.2014, that the vehicle was once again sent for service on 05.07.2014 and that it was serviced just two

weeks before the brake-failure incident said to have taken place on 20.07.2014, are all denied.

On 24.10.2013, it was reported that the vehicle had brake pad worn-out warning which is a safety measure in the Car intimating the condition that brakes are reaching the minimum wear limit, thereby, to avoid any disaster. After replacing the front and rear pads and rear brake discs, the vehicle was delivered on 12.11.2013. Nowhere in the Job Card of the OPs, there is any report about the Brake Failure as alleged by the complainant. Further, the service history of the vehicle shows its poor maintenance, overloading, frequent damage and rough use for the business purposes of the complainant. The vehicle has been ready since August, 2014, but, the customer has not come forward to take delivery; as such, there is no scope to allege any service deficiency or unfair trade practice against OP Nos.1, 3 and 4. Thus, these OPs sought for dismissal of the complaint insofar as it pertains to them.



4. OP No.2 has filed a separate written version and the crux thereof is as follows:-

This OP is situated outside the territorial jurisdiction of this Commission and no complaint can be filed against them without obtaining the leave of the Commission. The complainant-Partnership Firm does not fall under the category of a consumer as defined in the CP Act, since the purchase of the vehicle was meant to claim depreciation, which is a method adopted by 'purchaser business entities' to claim expenses and to bring an overall reduction in the Income-tax liability.

Audi vehicles are globally known for their safety features, quality and road-worthiness and the vehicle in question is no exception and it does not suffer from any manufacturing defect as alleged by the complainant. The averments regarding the incident of brake-failure are denied for want of knowledge. Nowhere in the service records or the job sheets of the car, it is mentioned that there is a brake failure as alleged in the complaint. This OP verified from the Dealer that the vehicle in question was serviced as per the

Audi standards wherein no indication of any brake-failure was observed. As such, it is false to state that the vehicle has any inherent manufacturing defect.

The vehicle was purchased almost 5 years prior to the alleged incident and its tenacious utility only shows its roadworthiness and also falsifies the allegation of any inherent defect therein. This is a false complaint filed only with a mala fide intention to get replacement of a vehicle that has been used by the complainant/firm for more than 5 years. There is no cause of action at all to file the present complaint which is bad in law and hence, it is liable to be dismissed *in limini*.

5. In support of the claim and counter-claim, both sides have filed their respective proof affidavits and, while the complainant has filed 20 documents as Exs.A1 to A20, on the side of the OPs-1, 3 and 4, 5 documents have been marked as Exs.B1 to B5.



6. Learned counsel for the complainant, by stating incipiently that the Audi Car in question, bearing Registration No.TN-09-BD-3777, was purchased by the complainant for his personal use by paying a sum of Rs.60,08,000/-, believing the tall claim of the Manufacturer that that the hallmark of the vehicle is its advanced braking system and several other safety features, has primarily drawn our attention to Ex.A20/Automobile Literature that throws an idea on Life Span of Brake Pads - published at the webpage of auto.howstuffworks.com, laid emphasis upon the following text/data there-from -

" How long do brake pads last?

.... Mechanics and manufacturers have a loosely agreed upon mileage range from around 30,000 to 70,000 miles (48,280 to 112,654 Kilometers) ",

and submitted that, in the present instance, the Tax Invoice/Servicing Bill under Ex.A3 shows that the car in question has covered only 42036 Kms, which mileage would

go to show that it was not subjected to rough use as contended by the OPs and further, when the brake pads in the cars of even normal range, as per the above Automobile Literature, would last till they reach a coverage between 48,220 and 112,654 KMs., the present car with advanced braking system and several safety measures, has developed the Brake-Pad Warning much earlier without even covering a decent mileage. According to him, if that issue was properly attended and settled out-and-out during the servicing done under Ex.A3 in November, 2013, which includes removal and re-installation of front and rear brake pads and brake discs, for a total bill amount of Rs.2,47,051/-, the problem, unless it is inherent, would not have recurred, whereas, the said servicing bill, although mentions the next servicing due date as 23.10.2014, much before that, during June, 2014 itself, the car started to indicate Rear LH Side Brake Warning, for which, it had to be serviced once again with the 3rd OP, who raised a bill for Rs.1,66,075/- under Ex.A4, dated 05.07.2014, by mentioning the next service due date as 12.11.2014. While



delivering the vehicle on 05.07.2014, the 1st OP issued a letter conveying a message about the said service in the following words:-

*" Our service team has done
their best to delight you."*

But, to their shock and dismay, hardly two weeks later thereto/on 20.07.2014, when the vehicle had just covered 1485 Kms. after the intermittent servicing, the complainant travelled in the car from Chennai to Yercaud and while they were nearing the Kalla'kurichi Tollgate, instead of experiencing a delightful journey as conveyed by the OPs, the vehicle virtually pushed the occupants to the brink of doom owing to its sudden brake failure, however, after great difficulty, the Driver brought it to a halt, whereupon, immediate intimation was given to the 3rd OP that had towed the vehicle to their workshop.

Learned counsel next refers to the Vehicle Condition Report Form, dated 21.07.2014, said to have been issued by the 3rd OP under Ex.A6, lays much emphasis upon the following two entries therein:-

**" Reported Fault : Break (sic. for Brake) Down
Fault Found: Break (sic. for Brake) Failure",**

and submits that the sequence of events would go to show that the so-called high-end vehicle sold by the OPs is not even compatible with the normal-range vehicles in terms of brake mechanism & safety, for, even before covering a normal range of 45000 km. mileage, the vehicle had signaled Brake-Pad Warning, whereupon, by spending more than Rs.2 lakh, the issue was attended under Ex.A3 and, even thereafter, much prior to the next service due date, again, the brake issue developed at the rear left hand-side part, resulting in a service under Ex.A4 for a bill of Rs.1.66 lakh with a separate assurance letter under Ex.A5 by the OPs that the servicing done by the team would bring delight to the consumer, but, hardly two weeks thereafter, the high-end vehicle without giving any warning has suffered brake-failure, leaving the occupants into a traumatic shock. The aganoized complainant made enquiries and he came to know that, from 2012 onwards, Audi started recalling its Cars of Q7 Model of Diesel Version to which the present vehicle



belongs to. In support of such argument, he has also referred to Ex.A16, a news-report appeared in Industry Week with the caption "**Audi Recalls 70000 cars over Braking System Problem**" and drawn our attention to the following text there-from:-

*" An Audi spokesman told AFP that the recall affected the company's A4, the A5, the A5 Cabrio, the A6, **the A7***

The models were fitted with the 3.0 liter TDI turbo diesel engine.

The problem had been found within the brakes as the engine oil could enter the brake servo through the vacuum lines and make it rupture, causing failure, Audi explained. "

Learned counsel adds that the present vehicle is also a Q7 3.0 TDI - Diesel version and the problem highlighted in the above news-item squarely fits to this vehicle in the light of the factual events that had taken place here. That being so, when the core safety feature of the braking system itself in the vehicle is rendered questionable, instead of acceding to

the just plea of the complainant for replacement, the OPs only endeavour to save their image at any cost, which attitude is highly unfortunate and condemnable. Further, the vehicle was purchased purely for private purposes and, merely because it was purchased in the name of the Firm, it cannot be legally said that it is meant for commercial purposes, particularly when there is no basis for such claim. Learned counsel, by relying upon a handful of decisions including the one reported in **2013 (SCC) Online NCDRC 1031 (Tata Motors vs. Rajesh Tyagi & Anr.)** for the proposition that it is the bounden duty of both the Manufacturer and the Dealer to attend to the defect and make it a defect-free vehicle and if they are not in a position to do so, they should either refund the cost of the vehicle or provide a new vehicle to the consumer, ultimately submits that all the technical points raised by the OPs cannot stand to logic and reason, since the facts and sequence of events involved herein self-speak the service deficiency on the part of the OPs and hence, the case of the complainant deserves all acceptance by this Commission.



7. In an endeavor to assail the claim and arguments made on the complainant's side, learned counsel for the Carmaker/OP No.2 has made a four-fold submissions.

Firstly, the complaint is liable to be dismissed *in limini* for the reason that the complainant, being a Partnership Firm, does not fit within the definition of a consumer as defined in the CP Act. Further, the vehicle in question was purchased in the name of the Firm, obviously with a purpose to claim depreciation, which is a method adopted by 'purchaser business entities' to claim expenses and to bring an over-all reduction in the income tax liability. In that manner, every financial year, the complainant/Firm would have claimed depreciation for the vehicle in question. By capitalizing the purchase of cars in their Books of Accounts, Firms like the complainant claim depreciation and other expenses relating to the car by indicating the same as 'business expenses' and thereby, the income tax liability is drastically reduced. Inasmuch as there is thus a direct nexus between the purchase of the car and the profit-

making activity by the complainant, there is neither any *locus standi* nor cause of action for them to maintain the present consumer case and hence, it is liable to be dismissed *in limini* with exemplary costs.

Secondly, insofar as the 2nd OP is concerned, their reputation is well-known all over the world as the Manufacturer of high-end luxury cars with impeccable features and high-safety standards that ensure trouble-free & safe driving experience to the user of the car and its occupants. Every car manufactured by them passes through stringent quality and safety tests and only thereafter, it is delivered to the authorized dealers with whom they share the relationship on principal to principal basis. Once the cars are delivered by the Manufacturer upon the request/demand of the Dealers, it is the responsibility of the latter to deliver the car and the warranty given by the Manufacturer is exclusively limited to the extent of quality and potency of the vehicle supplied by it to the dealer and it does not cover any other aspect. As such, 4 long years after the sale of the vehicle, there is no



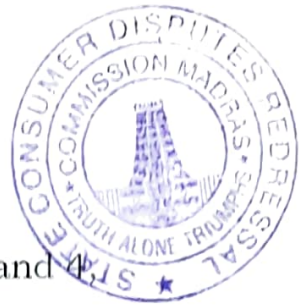
point in dragging the manufacture over the allegation of any defect much less manufacturing defect in the subject vehicle.

Thirdly, even as per the averments in the complaint, the Brake-Pad Warning started to glow nearly at the end of 2013 during October and that itself would go to show that the car had never faced any brake issue for the past 4 years from the date of its purchase and hence, the question of any manufacturing defect does not even arise at all. Further, the 2nd OP had also verified from the Dealer, who had undertaken the task of servicing, that the vehicle was serviced as per Audi Standards and that no issue of any brake failure was ever observed by them. Depreciation in the brake-pad is attributable purely to the usage of the vehicle and hence, there cannot be any veracity in the claim and allegation of manufacturing defect. Specifically answering the arguments advanced on the complainant's side by referring to the news-items that Audi had recalled its Q7 Diesel Edition owing to brake issues, learned counsel replies that such information appeared in the web or news journals

cannot be given any credence or even looked upon as documentary evidence and, in that regard, he has referred to some case-laws including the one reported in **AIR 1988 SC 1274 (Laxmi Raj Shetty & another vs. State of Tamil Nadu)**, wherein, it has been held that the newspaper item being in the nature of hearsay secondary evidence in itself has no evidentiary value, unless proved by evidence **aliunde**.

Fourthly, the present complaint is bad for want of jurisdiction since the 2nd OP is situated outside the territorial jurisdiction of this Commission.

Inasmuch as the averments in the complaint and the materials filed in support of the same do not make out a prima facie case of service deficiency, negligence or unfair trade practice against the 2nd OP/Manufacturer, the claim & complaint of the complainant is liable to be dismissed at the threshold insofar as it pertains to this OP, learned counsel urged ultimately.



8. Learned counsel appearing for OP Nos.1, 3 and 4 by referring to the supplementary notes of arguments filed by the said OPs, has raised a preliminary objection by stating that, nowhere in the complaint, it is averred that the vehicle in question was purchased for personal use and hence, the only inference is that the same was purchased for commercial use of the complainant/firm; as such, the case does not fall within the ambit of 'consumer dispute'. On that score alone, the complaint is liable to be dismissed.

Learned counsel, by highlighting the stand of OP Nos.1, 3 and 4 that they are just Dealer-cum-Service Partners of the 2nd OP/Manufacturer; that the 1st OP is a Brand Name of OP Nos.3 and 4, as such, they are all one and the same entities; and that they are totally different entities from the 2nd OP/Manufacturer, submits that the entire complaint revolves around the allegation of inherent defect in the subject vehicle, for which, these OPs, who are only Dealers/Service Partners, have hardly any say over the issue particularly when it is not the definite case of the complainant that the after-sale servicing done by these OPs

are abysmal or deficient; as such, no liability is attracted against them.

Learned counsel further submits that the vehicle was purchased on 21.01.2009 and till 12.11.2013, except subjecting the vehicle for periodical servicing as recommended by the 2nd OP, no issue relating to brake was ever reported by the complainant, who brought the vehicle for the first time over the brake issue on 12.11.2013, at which time, the vehicle had covered a mileage of 42036 KMs, whereupon, the issue was duly fixed and the vehicle was taken delivery with full satisfaction of the servicing done by the 3rd OP. It is true that the vehicle was brought over an issue in the brake on 11.06.2014, after covering a mileage of 47837 KMs. and that time also, the problem was duly rectified and, with full satisfaction about the safe condition of the vehicle, it was taken delivery. While so, for the first time, the vehicle was reported for brake concern on 21.07.2014 at a mileage of 49347 KMs, whereupon, the problem was duly attended and the vehicle was also made ready under intimation to the complainant, however, they



never came forward to take back the vehicle despite letters, reminders, emails and calls. Now, they have come up with the present complaint by making baseless allegations and seeking a colossal compensation without any basis there-for. In its various decisions, the Apex Court has time and again held that deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service and that the burden of proving the deficiency in service is upon the person who alleges it; while so, here, the complainant herein has miserably failed to discharge such burden, as such, the complaint against these OPs is liable to be dismissed in its entirety, he pleaded ultimately.

9. We have carefully considered the rival submissions advanced by the respective counsels in the light of the materials placed before us and we are of the view

that the following issues arise for consideration in this complaint:-

a) *Whether the technical point pertaining to territorial jurisdiction raised by the 2nd OP/Carmaker is a valid and sustainable defence?*

b) *Whether the case of the complainant is diluted by the OPs' versions & interpretation of facts having regard to the definition of 'Consumer', the issue of commercial transaction and their inference that the vehicle was purchased by the complainant only for showing depreciation in the Profit & Loss Accounts to have the income tax liability reduced?*



c) Whether, on the basis of the averments made in the complaint and the materials made available on their side, if at all there is any service deficiency or negligence or unfair trade practice, does it reflect any 'product defect' that would attract liability against the Manufacturer/2nd OP or a "service defect" which is traceable to the other OPs/Dealer-cum-Service Partner?

**d)
complainant is entitled to?**

10. Coming to the 1st issue, although the 2nd OP is based at Mumbai, the Cars manufactured by them are sold and serviced in Chennai through the other OPs and although it is stated that the OPs share the relationship

between them on principal to principal basis, if there is any manufacturing defect reported by a consumer in the newly purchased vehicle, the Dealer would address only the 2nd OP on behalf of the purchaser/consumer and they will not ask him/her to contact the Manufacturer at Mumbai. When a manufacturer has their business seat at one single place and they sell their products across the country through the dealers appointed by them in the respective States, they cannot veil themselves from being arrayed as a party to the consumer proceedings launched with the allegation of manufacturing defect before a Forum, within whose jurisdiction the complainant resides, by conveniently harping upon the issue of territorial jurisdiction. In this regard, it would be appropriate to refer to Section 17 (2) of the Consumer Protection Act, 1986, and the same is extracted here-under:-

"17.

[(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—



(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action,
wholly or in part, arises.] .

From a reading of the above provision and contrasting it with the facts of the case on hand, it is axiomatic that the 2nd OP carries on its business through the other OPs at Chennai and further, admission of the case by this Commission implies its permission for institution of the complaint against the 2nd OP unless it is otherwise demonstrated during the course of the proceedings. Therefore, in our view, the 2nd OP cannot stand to gain on this insipid technical point and the issue is answered accordingly, against them.

11. Coming to the second issue, it is the argument of the OPs that, since the vehicle was purchased in the name of the Firm/Saravana Stores Tex, the said factum itself is sufficient to infer that it was procured for business purposes, clearly reflecting the commercial nature and, as such, the complainant has no *locus standi* to raise the consumer dispute. Further, the purpose behind purchase of the vehicle by the complainant was to claim depreciation

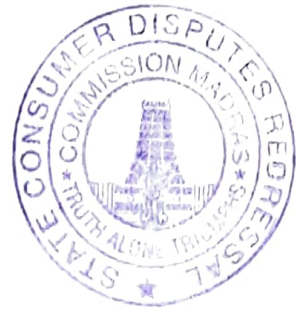


which is a method adopted by 'purchaser business entities' to show expenses and to bring an overall reduction in the income tax liability.

On the contrary, learned counsel for the complainant refutes the same by stating that the vehicle purchased in the name of the Firm was meant only for personal use, that no one would use a luxury car worth more than Rs.60 lakh to transport bulky garment bundles, that the vehicle was registered as a private vehicle with a White Board and not Yellow Board which is meant for commercial vehicles, that it is common knowledge that, when a brand new vehicle leaves the showroom, it suffers depreciation at least by 20%, and that, if the logic derived by the OPs is applied, no mediclaim policy-holder will be a consumer since the mediclaim policy allows the income-tax assessee to claim a rebate under Section 80C of the IT Act. According to him, thus, the argument of the OPs in that regard is completely bereft of logic and rationale.

In our opinion, the contention of the OPs does not merit acceptance for more than one reason. Firstly, merely

because the vehicle is purchased in the name of the firm, that itself does not bring home the notion of commercial purpose particularly when a reading of the averments as a whole in the complaint only convey and denote that the high-end car was handpicked for family use owing to its advanced safety features. Secondly, there is nothing to infer here that the vehicle was purchased for re-sale or to deploy it in the large-scale commercial activities connected to the income-generating textile business of the firm. When such elements are completely invisible, one would hardly find any nexus between the purchase of the high-end car and the large scale textile activity carried out by the Firm for earning profit, so as to suggest any commercial purpose. In this regard, it is apt to refer to the distinction drawn through a categorization between commercial and non-commercial purpose as well as the analogy expounded by the National Commission in its ruling rendered in ***Crompton Greaves Ltd., & Anr. vs. Daimler Chrysler India Pvt Ltd. & Ors (2016 SCC Online NCDRC 2121)***. Relevant passages from the above ruling are quoted below:-



"6. *The goods and services made available by a company to its directors or employees can be classified into the following three broad categories:-*

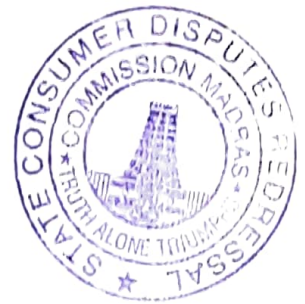
(a) *The goods and services which are obtained for and made available to the directors or employees of the company and are used by them only for their personal purposes, unconnected with the business of the company. For instance, the cars used by the directors and employees of the company for their shopping, outings, recreations, etc. or for commuting to and from the office of the company. Another example can be the air conditioners and furniture provided at the residence of the directors and employees of the company or the telephone or broadband got installed by the company at their residence.*

(b) *The goods and services made available to the directors or employees of the company and used by them primarily for their personal purposes but incidentally, also for the purposes of the company. For instance, a car used mainly for outings, recreations, personal commuting etc. of the directors and employees or their families, but also*

for visiting the factory and offices of the company or attending the business meetings.

(c) *The goods and services made available by a company to its directors and employees primarily for the purposes of the company and used by them mainly for the purposes of the company but incidentally also for their personal purposes. For instance, a vehicle purchased for being used as a staff car or a delivery van, but sometimes also used for the personal purposes of the directors or employees, unrelated to the business of the company.*

7. *As far as the goods and services falling in category (a) are concerned, there can be no dispute that since such goods were purchased or the services were hired or availed by the company and made available to its directors and employees for the purposes wholly unrelated to the business activities of the company, such an acquisition cannot be said to be for a commercial purpose. No commercial purpose of the company is achieved by purchasing such goods or hiring or availing such services and then making*



them available to its directors and employees.

8. *In our opinion even if such goods or services are incidentally used by the directors or employees of the company for the purposes of the company, that would not lead to the conclusion that the acquisition of such goods or services was for a commercial purpose. The dominant purpose behind such acquisition being to provide an amenity to the directors or the employees as the case may be, it cannot be said that the company was seeking to make a profit or advance its business by such an acquisition. The use for the purposes of the company being subsidiary and incidental in nature, cannot override the dominant purpose for which they were acquired and made available to the director or the employee of the company. Therefore, the acquisition of goods and services, even if they fall under category (b) above, cannot be said to be for a commercial purpose.*

9. *As far as the goods or services falling in category (c) are concerned, since the dominant purpose behind such acquisition is to advance and sustain the business activities of the company*

and the use for the personal purposes of the directors or the employees being incidental, it can be safely said that such an acquisition was for the commercial purposes of the company.

.....

11. For the reasons stated hereinabove, the issue referred to the larger Bench is answered as follows:-

(a) If a car or any other goods are obtained or any services are hired or availed by a company for the use/personal use of its directors or employees, such a transaction does not amount to purchase of goods or hiring or availing of services for a commercial purpose, irrespective of whether the goods or services are used solely for the personal purposes of the directors or employees of the company or they are used primarily for the use of the directors or employees of the company and incidentally for the purposes of the company."

In the case law reported in **2020-2-SCC-265 (Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers)**, the Apex Court categorically ruled that the



identity of a person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose and that it has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. In the case on hand, prima facie, neither from the averments nor from the materials placed, we find any dominant purpose for generation of profit from the vehicle in question or its use mainly for business purpose and hence, the contention of the OPs in that regard has to be just repelled. Since the other contention raised by them stating that the purchase of the vehicle was aimed to claim depreciation for the purpose of reducing the income-tax, the same being highly presumptive without any proof there-for, it need not be gone into at all. Accordingly, the issued is answered against the OPs.

12. Before proceeding to deal with the 3rd issue, we deem it necessary to mention that, in a complaint of this

nature, both sides file their respective documents to substantiate their claim and counter-claim and the details gathered there-from would undoubtedly help much in understanding and adjudicating the case. But, here, the handful of documents numbering 5 that have been filed by OP Nos.1, 3 and 4 apparently give a negative impression against the said parties.

From Ex.A2/R.C. of the subject-car, we find that its Registration Number is "TN09 BD3777" and the colour thereof is "CALLA WHITE". That being so, the Repair Order filed by the 3rd OP as Ex.B4 to project a counter-claim that the car in question was not brought to them for any brake failure, rather, it was to check the issue of "Brake Pedal Hard To Apply", does not even reflect the description of the subject-vehicle which leads to a strong presumption that the said document would have been filed either without being cross-checked or created to discredit the complainant's claim. A perusal of the said document shows that -

***i) it does not mention
Registration No. TN-09-BD-3777***



relating to the subject-vehicle, but it is in respect of a vehicle with Registration Number - TN-02-AW-3777;

- ii) While the colour of the subject-car is "CALLAWHITE", the description given therein is "GRAPHITE GREY METALLIC"; and***
- iii) The space for the Service Advisor Signature is left blank.***

Ex.B5 being the Warranty Policy, in the remaining three other documents which are Tax Invoices/ Servicing Bills marked as Exs.B1 to B3 also do not bear the signature of the authorized signatory, whereas, the Invoices for similar Service Bills issued by the 3rd OP & marked on the side of the complainant as Exs.B3 and B4, dated 12.11.2013 and 05.07.2014 respectively, bear the signature of the Authorized Signatory. This creates a strong doubt about the prima facie authenticity of Exs.B1 to B4 and hence, it is quite unsafe to refer or rely upon the same.

13. Now, let us deal with the third issue. It is the specific claim and contention of the complainant that the vehicle was selected for their personal use only on believing the claim of the carmaker that it has special safety features, particularly in respect of the brake mechanism; while so, even before the vehicle could complete a 5 year period and it had just covered a mileage of 42036 kms, during November, 2013, the brake-pad warning started to glow in the car, whereupon, it was sent to the 3rd OP/Service Station that attended the issue and raised a bill under Ex.B3, dated 12.11.2013, for a sum of Rs.2,47,051/- and, while the next service due date was mentioned in the said Bill as 23.10.2014, much prior to that - in the 7th month since the last service & brake related repairs, during June, 2014 itself, when the car is said to have covered a mileage of 5801 Kms, it started to indicate Rear LH Side Brake Light Warning, for which, service & repair was done by the 3rd OP that charged Rs.1,66,075/- under Ex.B4/Bill, dated 05.07.2014, and the 1st OP also issued a letter on the same date under Ex.A5 stating that the service team has done their best to delight



the complainant, however, hardly 2 weeks later, on 20.07.2014, the car had suffered brake failure near Kallakurichi Toll Gate at about 11 PM and it is stated that the occupants were gripped with fear and trauma until the car was managed to be stopped by the Driver.

But, the OPs stoutly deny the incident that is said to have taken place on 20.07.2014 and their main defence is that the car never suffered any brake failure as stated by the complainant. According to them, on the said date/20.07.2014, the car was brought in a flatbed truck and found to be facing an issue with the brake booster and, after attending the same, they duly informed the complainant to take delivery of the vehicle, however, despite repeated intimations, calls, letters, etc., they never turned up to take back the vehicle; as such, there is no scope to allege any service deficiency against them.

In our view, mere denial by the OPs would not absolve them of their liability in this case where the defence of the 2nd OP revolves only around vain technicalities without any focus or endeavour to answer the allegations

and similarly, the other OPs have come up before this Forum with prevaricating statements in their version and by filing documents in an irresponsible manner, as already mentioned.

There is no dispute that the vehicle purchased by the complainant is not only a high-end model but also a highly-priced one above Rs.60 Lakh and, as such, it must be innately having special features in terms of luxury, quality, style, appearance and most importantly, safety aspects with screen display, compared to the other normal range cars. In this regard, let us look into the Brochure marked as Ex.A12, wherein, there is a separate paragraph that deals with Braking System and the same is relevant to be quoted below:-

"Braking System : dual-circuit, diagonally-split braking system, anti-lock system ABS with electronic brake force distribution (EBD) electronic differential lock (EDL), traction control ASR, Electronic

Stabilization Control (ESC) with hydraulic brake assist, ventilated 18-inch front disc brakes and ventilated rear 17-inch disc brakes."



The above information shows that, unlike the traditional braking system, the car had a powerful braking mechanism including ABS & Electronic Brake Force Distribution that would enable the Driver to maintain better control of the vehicle in the event of extreme braking. It is seen from Ex.A3 that, during 2013, when the car had only covered 42036 Kms, it indicated 'Brake-Pad Warning' which is an alert that the brake pad is nearing its lifespan and thereupon, the complainant had sent the vehicle for repair-cum-servicing and, as per Ex.B3, Tax Invoice issued by the 3rd OP, the issues were solved and a sum of Rs.2,47,051/- was paid by the complainant. While the said invoice mentions the next service due date as 23.10.2014, during June, 2014 itself, the car indicated Rear LH Side Brake Light Warning, whereupon, again, it was sent to the 3rd OP, who attended the issue and charged under Ex.A4 a sum of Rs.

1,66,075/- which amount was also paid. It is in the background of the above two servicing-cum-repairs done by the 3rd OP over the issues that included replacement of brake pad and brake-system warning on the rear LH side, we have to examine as to whether, on 20.07.2014, the car has suffered any brake failure just two weeks after solving the problem in the rear left-hand side brake by way of the servicing carried out under Ex.A4 which was subsequent to the Servicing-cum-repair done under Ex.A3 for the worn-out brake-pad, so as to draw a conclusion on the nature of defect.

According to the OPs, none of the service records relating to the car in question indicate that it had suffered brake failure on 20.07.2014 as alleged by the complainant and hence, the question of manufacturing defect does not even arise at all. Further, OP Nos.1, 3 and 4 stoutly deny the servicing done by them, although it is evident not only from their own Invoice Tax/Bills under Exs.A3 and A4 that are produced by the complainant but also from their



supplementary notes of argument, wherein, at para Nos.14, it is stated thus:-

" 14.

(ii) **The impugned vehicle reported for the 1st time for brake concern** on 12/11/2013, @ 42036 kms, upon which the same was attended to and the individual took delivery of the impugned vehicle only after satisfying himself that the impugned vehicle is in roadworthy condition in all aspect.

iii) **The impugned vehicle reported for brake concern** on 11.06.2014, @ 47,837 kms, upon which the same was attended to and the individual took delivery of the impugned vehicle only after getting convinced that the

*impugned vehicle is in safe condition
in all facet.*

*iv) **The impugned**
vehicle reported for the 1st time
for brake concern on 21/07/2014,
@ 49347 kms....."*

The above text only endorses the documents under Exs.A3 and A4 and as such, the objection made by the OPs against the said Exhibits cannot be sustained. It is very unfortunate, every time they attended the complaint of brake problem that pertains to safety of the vehicle and its occupants, it was recklessly reckoned by them to be a first-time issue. At any rate, the OPs mainly refer to Ex.B4/Repair Order which describes the issue as 'Check Brake Pedal Hard To Apply'. We have already held that the said document does not worth reference or consideration, since it seemingly pertains to some other vehicle. In fact, the Vehicle Condition Report Form filed on the side of the complainant as Ex.A6, which is said to have been issued by the 3rd OP, indicates that the car is reported to have



suffered brake-down, that it was picked up at Kallakurichi on 21.07.2014 and that it describes the "Fault Found" as "**Brake Failure**". However, the OPs now emphatically deny any instance of brake failure. We once again repeat, mere such denial is not sufficient to taint the truthiness of the failure in brake mechanism, particularly when OP Nos.1, 3 and 4 have instantiated it with a different vocabulary in their own version at para No.9 to the following effect:-

" 9. These Opposite Parties state that the vehicle was brought in a flatbed truck on 20.07.2014 and diagnosed the issue with brake booster ... "

The above part of the version given by the OPs concerned not only suggests that the car had encountered a problem on 20.07.2014 but also corroborates the complainant's emphatic averment and allegation regarding brake failure. It is common knowledge that a worn-out brake booster will make the brake pedal very hard, making it difficult for the Driver in pressing/applying the said pedal to stop the

vehicle. In other words, the power of the entire braking system is compromised without the brake booster's assistance and, in such scenario, the vehicle's stopping distance upon applying the brakes with hard exertion gets increased by several feet or more. The loss of stopping power while pumping the brake pedal is nothing but a clear brake failure. If a high-end vehicle with powerful sensors does not issue the warning for the same, the situation would be more terrible. In that horrendous moment for the driver and the occupants, if the vehicle encounters any hard collision before the stopping distance that too with considerable speed, the repercussions will be highly disastrous. If the above version of the said OPs is read together with Ex.A6, we can well discern the veracity in the claim of the complainant that the vehicle had suffered brake failure on 20.07.2014 and we can also visualize the terrific trauma, fear and panic one would have undergone till the vehicle could be stopped ultimately by the Driver. Therefore, it is clear that the brake failure was due to worn-out brake booster which virtually renders the brake pedal a rock-hard, leading to increased



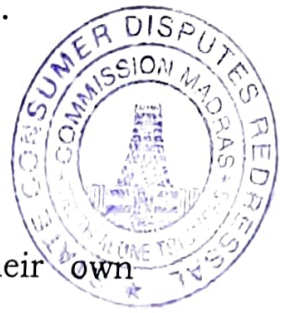
braking distance that has the potential to cause an accident.

As such, the principles of *res ipsa loquitur* (thing speaks for itself) come into play in this case, clearly indicating that the safety of the vehicle as well as the occupants were put at risk due to the clear failure in the braking mechanism of the car.

From the Tax Invoice/Servicing Bills, we find that large sums running to lakhs were paid by the complainant for the repairs/replacement-cum-servicing, not once but twice. As repeatedly mentioned already, the servicing done under Ex.A3 was, among other issues, for brake pad warning and the second servicing was much before the due date and this time also, there was a problem with the rear Left Hand-side Brake. As rightly pointed out, the irony is that the Head-After Sales/1st OP was pride enough to issue a letter on 05.07.2014 under Ex.A5 to tell the complainant that his team had done a servicing that would delight him, but unfortunately, what happened was, hardly two weeks later, as admitted by the other OPs in their version, the

brake booster had an issue on 20.07.2014, resulting in a traumatizing 'brake failure'.

Coming to the nature of defect, we find that, despite replacement of the parts in the brake-system of the vehicle twice, just two weeks after servicing & repairing the brake mechanism, the vehicle had encountered the brake failure due to worn-out brake booster. In all probability, the OPs/Dealer-Service Station which directly dealt with the vehicle, could have duly apprised the major issue incessantly erupting in its brake mechanism to the Manufacturer/OPs so that they could have at least by then recalled the vehicle for a perdurable solution to ensure that such an issue should not recur thereafter. But, unfortunately, the said OPs were not cautious and diligent enough in doing so. The way in which they filed the documents and presented the version with prevaricating statements speak enough about their conduct. In the same way, the 2nd OP, being a globally renowned and reputed manufacturer, who claims that they cross-checked the details from their Dealer, could have taken proper action



into the matter by recalling the vehicle on their own initiative. Since they are said to have recalled the Q7 Edition of the car particularly in view of the failure in brake-mechanism, with all diligence, they could have directly taken up the issue for a proper solution once it came to their knowledge, which they miserably failed to do. No service provider can be allowed to go scot free when a defect in their product is found to have the potential to cause serious injury or major loss to the consumer, particularly in respect of safety features of the vehicle.

Now, the learned counsel for the complainant states that the complainant could have taken delivery of the vehicle for selling the same to somebody else, however, they refrained from doing so since, what is unsafe for the complainant is equally unsafe for everyone else and hence, they did not take back the vehicle from the workshop of the 3rd OP, expecting just orders in this Consumer Dispute.

At this juncture, it must be reiterated that the OPs missed the opportunities at the right times to get the issue solved. As already pointed out, the Manufacturer and the

Service Station/Dealer ought to have taken serious note of the brake problem in the car when it was brought to the Service Station for the 2nd time after it was previously repaired for a brake issue. At least, after the vehicle was brought in a flatbed truck owing to the problem in the brake booster, they could have taken some real steps to recall the vehicle under intimation to the complainant, which they failed to do. In this case, both the Manufacturer and also the Dealer-cum-Service Station exhibited a clear conduct of negligence and service deficiency. In fact, the 3rd OP has loudly claimed that they duly intimated the complainant about their request to take back the car, but, such a letter sent by them under Ex.A13 again carries the registration number of some other vehicle by mentioning it at the Subject-space as TN-02 AW-3777 which does not pertain to the subject-vehicle.

At any rate, the Service Station replaces the parts that are supplied to them by the Manufacturer and, even after such replacement, if the problem recurs, resultantly causing brake failure due to worn-out brake booster that



was not even signaled-displayed by the high-end car functioning with sensors, it only reflects the manufacturing defect surrounding the brake mechanism, for which, the 2nd OP must be held liable.

14. Coming to the 4th issue, we find that the complainant had sought for replacement of the vehicle, but, when it is his case that the present model/Q 7 3.0 TDI Quattro has a manufacturing defect in the brake mechanism, ordering replacement of vehicle cannot be a proper relief. Hence, it would be just and proper to direct the 2nd OP to refund Rs.60,08,000/- (Rupees sixty lakh and eight thousand only) that was paid by the complainant towards the purchase amount of the car. Since the vehicle in question was put to utility by the complainant for a considerable period of time and now, we have ordered refund of the entire purchase amount of the car, there is no need to award any compensation.

15. In the result, the complaint is allowed against the 2nd OP to the extent of directing the said OP to refund

the purchase amount of the car viz., Rs.60,08,000/- (Rupees sixty lakh and eight thousand only) to the complainant, besides a sum of Rs.25,000/- towards litigation expenses, within two months from the date of receipt of a copy of this order, failing which, the said sum shall carry interest @ 9% p.a. from the date of the complaint till the date of actual payment.

Sd/-
R. VENKATESAPERUMAL
MEMBER

Sd/-
R.SUBBIAH
PRESIDENT

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE COMPLAINANT

<u>Sl.No.</u>	<u>Date</u>	<u>Description of Documents</u>
Ex.A1	21.01.2009	Copy of Tax invoice – Sale of Audi Q 7 Car
Ex.A2	27.02.2009	Car Registration Certificate
Ex.A3	12.11.2013	Copy of Tax Invoice – Servicing Bill
Ex.A4	05.07.2014	Copy of Tax Invoice – Servicing Bill
Ex.A5	05.07.2014	Copy of letter from the 1 st opposite party
Ex.A6	21.07.2014	Copy of Vehicle Condition Report form
Ex.A7	13.08.2014	Copy of legal notice to the opposite parties
Ex.A8	14.08.2014	Copy of acknowledgement due card
Ex.A9	16.08.2014	Copy of acknowledgement due card
Ex.A10	06.09.2014	Copy of reply to the legal notice



Ex.A11	25.10.2014	Copy of letter from the 1 st opposite party
Ex.A12	--	Copy of relevant extracts of car brochure
Ex.A13	--	Copy of letter from the 3 rd opposite party
Ex.A14	02.10.2015	Copy of legal notice to the 3 rd opposite party
Ex.A15	06.10.2015	Copy of India Post delivery tracking sheet
Ex.A16	29.08.2014	Copy of Audi recalls 70,000 cars over Braking System Problem – Industry Week News Report
Ex.A17	--	Copy of extracts of complaint board of Website of opposite parties
Ex.A18	03.07.2012	Copy of Autocar magazine News Report
Ex.A19	June, 2012	Copy of extract of recall code of Society of Indian Automobile Manufacturers (SIAM)
Ex.A20	14.07.2010	Copy of Expert Opinion of Life Span of Brake Pads by level 3 Chrysler Certified Brake Technician

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE OP Nos. 1, 3 & 4

<u>Sl.No.</u>	<u>Date</u>	<u>Description of Documents</u>
Ex.B1	12.11.2013	Copy of Tax Invoice
Ex.B2	01.04.2014	Copy of Tax Invoice
Ex.B3	05.07.2014	Copy of Tax Invoice
Ex.B4	21.07.2014	Copy of Repair Order
Ex.B5	--	Copy of Audi Warranty

LIST OF DOCUMENTS MARKED ON THE SIDE OF THE 2nd OP

<u>Sl.No.</u>	<u>Date</u>	<u>Description of Documents</u>
Ex.B6	14.09.2016	Copy of authorization letter

Sd/-
R. VENKATESAPERUMAL
MEMBER

Sd/-
R.SUBBIAH
PRESIDENT

Reliable: Yes ✓



STATE CONSUMER DISPUTES REDRESSAL COMMISSION, CHENNAI

TAMIL NADU

Free certified copy

Case No.....CC No. 171/2014.....

Serial No. of the —

Date of receipt of —

Name of the applicant —

Date of disposal 22.11.2022

Date of preparation 19.1.2023

Date of dispatch of free certified copy of order —

By Hand.....24.1.2023.....

By Post.....—.....

R. Mathew
REGISTRAR I/c
STATE COMMISSION, CHENNAI
TAMIL NADU
8
19/1/23