

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 128 OF 2021

(Against the Order dated 26/11/2019 in Appeal No. 248/2018 of the State Commission
Himachal Pradesh)

1. SUNIL KUMAR

.....Petitioner(s)

Versus

1. M/S. SHIMLA AUTO ZONE & ANR.

THROUGH ITS PROPRIETOR & DIRECTOR, AUTHORIZED
DEALERS OF M/S. ASHOK LEYLAND LTD., LIGHT
VEHICLES RAJA KA BAGH, TEHSIL NURPUR DISTRICT
KANGRA,

DISTRICT KANGRA

HIMACHAL PRADESH.

2. ASHOK LEYLAND LTD.

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. ADITYA DHAWAN, ADVOCATE

MR. KIRAN DHAWAN, ADVOCATE

FOR THE RESPONDENT : MR. ARJUN JAIN, ADVOCATE FOR R-1

MR. VIJAY VALSAN, ADVOCATE FOR R-2

Dated : 03 July 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 58(1)(b) of Consumer Protection Act 2019, against the order dated 26.11.2019 of the State Consumer Disputes Redressal Commission, Himachal Pradesh, Shimla, (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 248 of 2018 in which order dated 09.08.2018 of District Consumer Disputes Redressal Commission, Kangra, H.P. (hereinafter referred to as District Commission) in Consumer Complaint (CC) no 28 of 2017 was challenged, inter alia praying to revise, quash and set aside the order dated 26.11.2019 passed by the State Commission, in First Appeal No. 248 of 2018.

2. While the Revision Petitioner (hereinafter also referred to as Petitioner or Complainant) was Respondent No.1 and the Respondent No.1 and Respondent No.2 (hereinafter also referred to as OP-1 & OP-2) were Appellant and Respondent No.2 respectively in the said FA 248/2018 before the State Commission, the Revision Petitioner was Complainant and Respondent(s) were

OPs before the District Commission in the CC no 28 of 2017. Notice was issued to the Respondent(s) on 26.02.2021. Parties filed Written Arguments/Synopsis on 11.11.2021 (Petitioner), 30.06.2023 (Respondent No.1) and 18.10.2021 (Respondent No.2) respectively.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that the complainant purchased a vehicle with registration No. HP-38E-0819 from OP-1 on 09.06.2016, intending to use it for self-employment and earn a livelihood. However, on 11.08.2016, when the vehicle had covered a distance of 15050 KM from the date of purchase, a sudden defect occurred. The complainant immediately reported the matter to OP-1 and took the vehicle to their workshop for repair. After the defect was rectified, the vehicle was returned to the complainant by OP-1. It was pleaded that thereafter again on 22.11.2016, when vehicle had covered 16781 KM, a defect occurred in vehicle in question and its engine including accelerator stopped working properly and matter was reported to OP-1 on the same day, but they could not rectify the defect. The vehicle in question is still lying parked in the workshop of OP-1. The complainant contends that the defect was a result of a manufacturing defect in the vehicle and that the OPs are responsible for the deficiency in service. Consequently, the complainant sought relief in the form of a direction to the OPs to either replace the vehicle with a new one or refund the entire consideration amount. It is also alleged that during the pendency of proceedings before the District Commission, OP-1 allowed the said vehicle to be taken by the financier of the vehicle Hinduja Leyland Finance Ltd.

4. Vide Order dated 09.08.2018, in the CC no. 28 of 2017 the District Commission has –

(i) Partly allowed the complaint and direct OP-1 to hand over the vehicle to petitioner after rectification of defects in engine by replacing defective parts free of costs failing which it shall be liable to pay the insured declared value of the vehicle as per insurance policy alongwith interest @ 9% p.a. from the date of complaint till realization;

(ii) Directed OP-1 to pay Rs. 50,000/- as compensation for committing unfair trade practice including mental harassment etc., besides litigation charges to the tune of Rs. 5,000/- to complainant.

5. Aggrieved by the said Order dated of District Commission, OP-1 appealed in State Commission and the State Commission vide order dated 26.11.2019 in FA No. 248 of 2018 has-

(i) Upheld the order of the District Commission that OP-1 would pay Rs. 50,000/- to complainant as compensation for committing unfair trade practice and harassment;

- (ii) OP-1 would pay litigation costs to complainant to the tune of Rs. 5000/- ;
- (iii) Partly allowed the appeal and has set aside the order that OP-1 in alternative would pay IDV of vehicle in question as per Insurance Policy to complainant alongwith interest @ 9% p.a. from the date of complaint till actual payment.

6. Heard Ld. Counsel for the Petitioner as well as Ld. Counsel for the Respondent No. 1 (Dealer) and Respondent No. 2 (Manufacturer).

7. District Commission vide its Order dated 09.08.2018 has directed Opposite Party No. 1 to hand over the Vehicle to the Complainant after rectification of defects in engine by replacing the defective parts free of costs within 30 days from the date of receipt of Order failing which it shall be liable to pay Insured Declared Value (IDV) of the vehicle as per Insurance policy alongwith interest @ 9% per annum from the date of complaint till realization. In addition, OP No. 1 was directed to pay Rs. 50,000/- as compensation for committing unfair trade practice including mental harassment, besides litigation cost of Rs. 5000/-.

8. In Appeal, vide order dated 26.11.2019 the State Commission modified the above said order of the District Commission by affirming only the parts related to payment of compensation of Rs. 50,000/- and litigation cost of Rs. 5,000/-. It is observed by the State Commission in its order that the State Commission is of the opinion that order of District Commission warrants partly interference by State Commission relating to payment of IDV of vehicle in question by the repairer i.e. M/s. Shimla Auto Zone/ OP No. 1. The State Commission is of the opinion that under law repairer is not under legal obligation to pay entire IDV of vehicle mentioned in Insurance policy. On the contrary, as per law Insurance company is under legal obligation to pay IDV of vehicle because IDV of vehicle in question was assessed by Insurance company and was not assessed by repairer and there was no contract between complainant and repairer to pay IDV of vehicle in question.

9. During the hearing, Ld. Counsel for the Petitioner conceded that they have not pleaded before any forum that the said vehicle is within the warranty period, although the vehicle was purchased on 09.06.2016 and last sent to OP No. 1 for repairs on 22.11.2016 i.e. within about six months. We are of the opinion that if the purchaser of the vehicle wants the free of cost repair/ replacement of any parts of the Vehicle (or the replacement of vehicle itself), which is permissible during the warranty period only, it has to first plead that it was during the warranty period and secondly establish that it was not only during the warranty period but also has some

manufacturing/inherent defects making the dealers/manufacturee liable for free of cost repairs/replacement.

10. The second point argued by the Ld. Counsel for the Petitioner is that the vehicle in question was with OP No. 1 since 22.11.2016 and it has been wrongfully handed over/ allowed to be taken over by OP No.1 to the Financer of the Vehicle i.e. Hinduja Leyland Finance Ltd. (herein after referred to as the Financer). While it was pleaded by Ld. counsel for the OP No. 1 that vehicle was not in their possession and they have not allowed it to be taken over by the Financer, they have not been able to show any evidence, documentary or otherwise, to show that the vehicle was not in their possession when it has been taken over by the Financer. On the contrary, State Commission has given a clear finding of fact on this issue that a vehicle in question was in the workshop of OP No. 1 for repair work when the same was repossessed by Financer. State Commission has observed that it is of the opinion that OP No. 1 was custodian of the vehicle in question at the time when financer took possession of the vehicle in question. OP No. 1 did not lodge any FIR against financer for forcible possession of the vehicle in question from the custody of OP No. 1.

11. Ld. Counsel for the OP No. 1 further contended that as on 11.08.2016, when the vehicle first time came with some problems, it had already run 15050 KMs and at the time of second/ last coming for repairs on 22.11.2016 it had run 16781 KMs, and assuming the vehicle to be under warranty period, could not have run for so many KMs if it had any inherent/ manufacturer defect.

12. Ld. Counsel for the OP. No. 2, the manufacturer, conceded that such vehicle are generally under one year's warranty and the present vehicle possibly is also under one year warranty. Hence as on 22.11.2016, when it went to the work shop of OP No. 1, it was under the warranty period. He further argued that under the Warranty the manufacturer is liable for free repairs/ replacement of the parts only if it was due to any inherent manufacturing defect, which has not been established in the present case.

13. Ld. Counsel for the Petitioner clarified and the same is also evident from facts of the case that the vehicle in question has not met with any accident and no claim, whatsoever, has been filed before the Insurance Company. Hence the question of making a claim from the Insurance Act or directing the Insurance Company to pay any claim does not arise. It is evident that District Commission allowed such a relief as an alternative relief and the insured declared value was treated more like assessed value/ depreciated of the car for the purposes of paying to the complainant in the event OP No. 1 was not able to implement the main relief which was

handing over the car after rectification of defects. To this extent we are of the view that the State Commission went wrong in interpreting that the IDV has to be paid by the Insurance Company and not by OP No. 1 (as an alternate relief in a situation of their failure to hand over the vehicle after rectification of defects). In the Petition, it is claimed that the financier has subsequently sold the vehicle to an unknown person and the same is not with either Petitioner or with any of the OPs now.

14. Ld. Counsel for the Respondent No. 2 has also pleaded that the relationship between the manufacturer and the dealer is on principal to principal basis and not on principal to agent basis. Hence they are not liable for any wrongful action on the part of the dealer except for their liabilities under the warranty for free repair/replacement of parts in case any inherent/manufacturing defect is established, which has not been done in the present case. To this Ld. Counsel for the Petitioner responded that he did file an application on 09.06.2017 itself before the District Commission for appointment of an expert to examine the vehicle and give their report whether it was having any such inherent/ manufacturing defects. However, as the OP No. 1 wrongfully allowed the vehicle to be taken by the financier and the same was not available with OP No. 1, such expert inspection could not take place.

15. In view of the above and after considering the rival contention of parties we are of the view that the District Commission was right in directing OP No. 1 to hand over the vehicle to Complainant after rectification of defects in engine by replacing defective parts free of cost failing which to pay insured declared value (IDV) of the vehicle as per insurance policy alongwith interest @ 9 % per annum from the date of complaint till date of realization. Here we treat the IDV as a method adopted by the District Commission to assess the depreciated value of the Car as on the date of their order/ as on the date of last policy taken by the Petitioner. To this extent we are of the view that the State Commission went wrong in observing that IDV is to be paid by the insurance policy and not by OP No. 1. We also endorse the findings of the State Commission that OP No. 1 is responsible for wrongful action of allowing the vehicle to be taken by the Financier without the consent of the Petitioner. Considering the relationship of principal to principal between the manufacturer and dealer, the manufacturer/ OP No. 2 is not liable for this wrongful action of OP No. 1.

16. Accordingly, we uphold the order of the District Commission and suitably modify the order of the State Commission and District Commission as follows :

OP No. 1 shall pay the depreciated value of the vehicle as on the date of its last coming to the workshop i.e. 22.11.2016 alongwith simple interest @ 9% per annum from the date of complaint before the District Commission till its realization. In the absence of any record having the depreciated value of the vehicle, we go by the order

of the District Commission where depreciated value has been treated as equal to insured declared value (IDV) of the vehicle as per the valid policy existing as on 22.11.2016. Other orders of the District Commission with respect to Rs. 50,000/- compensation for committing unfair trade practice as well as litigation cost of Rs. 5,000/- is also upheld.

17. Considering that the vehicle in question was financed and some amount may still be outstanding against the said finance, the amount payable by OP No. 1 under this order shall be first utilized to pay the balance amount payable to the financier and only the balance remaining, if any, shall be paid to the Petitioner. For this the Petitioner shall produce before OP No. 1 relevant document(s) from the Financer showing the balance payable by him to the Financer or in the alternative NOC in case he claims to have fully settled the said amount. Once the amount as per this order is paid by OP No. 1, the Petitioner shall have no right on the vehicle in question.

18. Revision Petition is disposed off accordingly. Parties to bear their respective litigation cost.

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DR. INDER JIT SINGH
PRESIDING MEMBER