

C.N. ANANTHARAM

v.

M/S. FIAT INDIA LTD. AND ORS. ETC. ETC.
(Special Leave Petition (C) Nos.21178-21180 of 2009)

NOVEMBER 24, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Consumer Protection Act, 1986: Deficiency in service
– Purchaser of diesel vehicle complained to the dealer about defect in the performance of the vehicle and in its engine – He alleged that the diesel vehicle made rattling noise – Dealer replaced the engine and few other parts – Purchaser insisted on replacement of the vehicle with a new vehicle – Filed complaint before Consumer Forum seeking replacement of vehicle and in the alternative refund of the purchase price along with expenses – Dissatisfied with the orders of District Forum and State Commission, the purchaser approached National Commission – National Commission directed the dealer and the manufacturer to remove the defect and deliver it to the purchaser after certification of an independent technical expert that the vehicle was free from any defect – **Held:** An engine operating on diesel makes a rattling noise which does not occur in petrol driven engines and in view of that there was really no manufacturing defect in the vehicle as complained of by the purchaser – In such circumstances, the order passed by the National Commission was not unreasonable – Apart from the complaint relating to noise from the engine and the gear box, there was no other major defect which made the vehicle incapable of operation, particularly when the engine was replaced with a new one – Directions given by the National Commission upheld with further direction that if the expert opines that the vehicle has inherent manufacturing defects, the purchaser would be entitled to refund of the price of the vehicle and the lifetime

A *tax and EMI along with interest @ 12% p.a. and costs.*

The complainant-petitioner purchased a diesel vehicle from a dealer, the second respondent and got it registered in his name. After the registration, he took the vehicle on a drive and found certain defects in the vehicle particularly in the engine. On the same day, he left the vehicle with the dealer for removing the defects. The engine and few other parts were replaced. The petitioner was still not satisfied with the performance of the vehicle and informed the dealer that the vehicle had inherent defects which could not be repaired and insisted on replacement of vehicle with a new one or for refund of purchase price together with the expenses incurred by him in trying to rectify the defects in the vehicle. On not receiving any response, the petitioner filed a complaint before the District Forum. The District Forum allowed the complaint and directed the first and second respondents to refund the claimed amount, together with interest @ 12% P.A. and a sum of Rs.5000 towards cost of legal proceedings. The State Commission modified the order of the District Forum and directed the first and second respondents to replace the vehicle with a brand new one and on failure to do so to refund the purchase price of the vehicle along with road tax and the monthly instalments paid by the petitioner along with the interest @ 12% P.A. from the date of order. Aggrieved, the respondents filed revision before the National Commission. The National Commission held that the petitioner could not prove any manufacturing defect, but directed the dealer and the manufacturer to remove the defects, if any, in the vehicle and make it roadworthy, if necessary by reconditioning the vehicle and deliver it to the petitioner in the presence of an independent technical expert who would certify that the vehicle was free from any defect and the same would be final for all purposes.

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The petitioner filed the instant special leave petitions challenging the order of the National Commission. A

Disposing of the special leave petitions, the Court

HELD: 1. The question which emerged after considering the submissions made on behalf of respective parties was whether the manufacturing company and by extension the dealer/agent was under any compulsion to replace the vehicle itself when the engine of the vehicle from which certain noises were allegedly emanating had been replaced. It was explained that an engine operating on diesel makes a rattling noise which does not occur in petrol driven engines and that there was really no manufacturing defect in the vehicle as complained of by the purchaser. In such circumstances, the order passed by the National Commission was not unreasonable. For whatever reason, except for a mere 800 kilometers the petitioner had not used the vehicle after it was delivered and had, on the other hand, made several complaints in an attempt to prove that there were manufacturing defects in the vehicle. The National Commission took all these matters into consideration in giving the impugned directions regarding delivery of the vehicle to the petitioner after having the same properly checked by an independent technical expert who would have to certify that the vehicle was free from any defect. [Paras 15, 16] [628-H; 629-A-D] B; C D E F

2. Apart from the complaint relating to noise from the engine and the gear box, there was no other major defect which made the vehicle incapable of operation, particularly when the engine was replaced with a new one. However, in addition to the directions given by the National Commission, it is directed that if the independent technical expert is of the opinion that there are inherent G

A manufacturing defects in the vehicle, the petitioner will be entitled to refund of the price of the vehicle and the lifetime tax and EMI along with interest @ 12% per annum and costs, as directed by the State Commission. [Para 17] [629-E, F]

B *Indochem Electronic v. Addl. Collector of Customs (2006) 3 SCC 721; Maruti Udyog Ltd. v. Susheel Kumar Gabgotra (2006) 4 SCC 644; Hindustan Motors Ltd. v. N. Siva Kumar (2000) 10 SCC 654 – referred to.*

C Case Law Reference:

(2006) 3 SCC 721 referred to Para 9

(2006) 4 SCC 644 referred to Para 13

D (2000) 10 SCC 654 referred to Para 14

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 9896 of 2010.

E From the Judgment & Order dated 17.4.2009 of the National Consumers Disputes Redressal Commission, New Delhi in RP No. 1585, 1713 and 2431 of 2006.

Kiran Suri, Vijay Verma, Rishi Jain and S.J. Smith for the Petitioner.

F Vijay Kumar, Thomas Qammen, Viswajit Singh, G. Umopathy, M.M. Manivel, Sangita Chahan and Rakesh K. Sharma for the Respondent.

The Judgment of the Court was delivered by

G **ALTAMAS KABIR, J.** 1. On 31st October, 2002, the Petitioner herein purchased a Fiat Siena Weekender diesel vehicle from M/s Sundaram Automobiles, Bangalore, the common Respondent in all these three Special Leave Petitions and agent of M/s Fiat India Ltd., the manufacturer of the said

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vehicle. The Petitioner paid a sum of Rs.7,69,187/- towards the Ex-showroom price of the vehicle, together with a sum of Rs.56,537/- towards lifetime road tax and Rs.28,964/- as insurance. The vehicle was duly registered in the name of the Petitioner on 25th November, 2002, when the vehicle was delivered.

2. According to the Petitioner, immediately after registration of the vehicle, it was taken out for a drive when certain defects, particularly in the engine, began to manifest themselves. The same day, the Petitioner left the vehicle with the dealer for removing the defects. On the very same day, the Respondent No.2, M/s Sundaram Automobiles, wrote back to the Petitioner stating that the vehicle was in good condition and the noise was on account of the operational characteristics of the engine. Thereafter, on several occasions, the Petitioner left the vehicle with the agent and various parts, including the engine itself, were completely replaced. The Petitioner, however, was not satisfied with the performance of the vehicle and came to the conclusion that the vehicle had inherent defects and could not be repaired. He, accordingly, insisted that the vehicle be replaced with a new vehicle or the amount paid by him as sale price be refunded, together with expenses incurred in trying to rectify the defects in the vehicle.

3. Not getting any response, the Petitioner filed Complaint No.474 of 2003 before the IVth Additional District Consumer Disputes Redressal Forum, Bangalore Urban, on 17th April, 2003. The complaint was heard by the District Forum, which allowed the same by its order dated 20th February, 2004, and directed the Respondents 1 and 2 to refund a sum of Rs.9,15,536/-, as claimed by the Petitioner, together with interest at the rate of 12% per annum and a further sum of Rs.5,000/- towards cost of the legal proceedings. The claim against Respondent No.3, M/s Fiat Sundaram Auto Finance Ltd. was rejected.

A 4. Aggrieved by the said order, the Respondents 1 and 2
 herein filed two separate appeals, being Nos.513 of 2004 and
 397 of 2004, respectively, before the Karnataka State
 Consumer Disputes Redressal Commission, Bangalore. On
 15th June, 2006, the State Commission disposed of the said
 B Appeals modifying the order of the District Forum by directing
 the Appellants (Respondents 1 and 2 herein) to replace the
 Petitioner's vehicle with a brand new vehicle or on their failure
 to do so to refund Rs.7,69,187/-, along with life time tax paid
 and the monthly instalments which had been paid by the
 C Petitioner, to M/s Sundaram Automobiles, together with interest
 @ 12% per annum from the date of the order and also the cost
 of Rs.5,000/-.

D 5. The matter was, thereafter, taken to the National
 Consumer Disputes Redressal Commission, New Delhi,
 hereinafter referred to as "the National Commission", by the
 Respondent No.1 in Revision Petition No.2431 of 2006. The
 Respondent No.2 (agent) filed Revision Petition No.1585 of
 2006. The Petitioner, in his turn, filed Revision Petition No.1713
 of 2006, before the National Commission. The National
 E Commission, while admitting the Revision Petition No.1585 of
 2006 on 25th July, 2006, only on the point of the monthly
 instalments (EMI) paid and the quantum of interest, directed the
 Revision Petitioner to deposit its share with interest at the rate
 of 9%. Aggrieved by the said order, the Respondent No.2 filed
 F Special Leave Petition (Civil) No.13201 of 2006 before this
 Court on 4th August, 2006, and the same was dismissed on
 22nd February, 2008. Revision Petition Nos. 2431 of 2006,
 1585 of 2006 and 1713 of 2006 were finally disposed of by
 the National Commission through a common order dated 17th
 G April, 2009. In the said order, the National Commission held
 as follows:

H "...Therefore, while we hold that the complainant has not
 been able to prove any manufacturing defect, all the same,
 the dealer and the manufacturer are directed to remove

the defect, if any, in the vehicle make it roadworthy, if necessary by reconditioning the vehicle and deliver it to the complainant in the presence of an independent technical expert mutually agreed upon by the complainant and opposite parties and for this purpose any of the party may apply to the District Forum for appointing such expert if it is not mutually agreed upon by the parties. The expert shall certify that the vehicle is free from any defect which shall be final for all purposes. This should be done within a period of three months. The Ops, thereafter, to provide a warranty for one year from the date of delivery. The revision petitions are accordingly disposed of in these terms. Under the peculiar facts of the case, there would be no order as to costs."

Thereafter, the Petitioner filed the instant Special Leave Petitions challenging the order of the National Commission.

6. The issues which fall for decision in these Petitions are :-

- (i) Whether it can be said that the manufacturing defect of the vehicle was such that it warranted replacement, and whether the refund of Rs.7,69,186/- and 12% interest as ordered by the State Commission was justified?; and
- (ii) Whether both the dealer and the manufacturer are jointly and severally liable in regard to deficiency of service?

7. Appearing for the Petitioner in all the three Special Leave Petitions, Ms. Kiran Suri, learned Advocate, urged that from the very day on which the vehicle was delivered to the Petitioner, it was obvious that there were several manufacturing defects in the vehicle, which could not be removed. The said position was duly appreciated both by the District Forum as well as the State Commission which directed the Respondents

A to replace the vehicle or to refund the amounts which had been
expended by the Petitioner for purchase and to make the vehicle
operational and roadworthy. The National Commission struck
a different note upon holding that there was no worthwhile
evidence to indicate that the vehicle had suffered from any
B serious manufacturing defect and that in any case the allegation
of noise emanating from the engine even after its replacement
with a new engine, could not be believed. Ms. Suri also
questioned the view of the National Commission that the
obligation of the manufacturer/dealer is only to repair/replace
C any part of the vehicle found to be defective, even during the
warranty period, free of charge, but that the question of
replacing the vehicle with a new vehicle was not justified.

8. Ms. Suri lastly submitted that the finding of the National
Commission that the Complainant/ Petitioner had not been able
D to prove any manufacturing defect, was perverse and contrary
to the evidence adduced by the parties and the materials on
record. Ms. Suri also questioned the finding that the refund of
the cost of the vehicle would also not be justified, since the
Petitioner had not taken the vehicle from the dealer despite their
E letter certifying that the vehicle had no defect. Ms. Suri submitted
that further direction given by the National Commission to
remove any defects and to make the vehicle roadworthy, if
necessary, by reconditioning the vehicle and to deliver the same
to the Petitioner in the presence of an independent technical
F expert mutually agreed upon, was wholly misconceived and
could not be sustained.

9. In support of her submissions, Ms. Suri referred to a
decision of this Court in *Indochem Electronic vs. Addl.*
G *Collector of Customs* [(2006) 3 SCC 721], wherein while
considering the provisions of Sections 3 and 14 of the
Consumer Protection Act, 1986, this Court was of the view that
when the deficiency began to manifest themselves it was the
duty of the suppliers to attend to such deficiencies immediately
and if the supplier was unable to attend to the deficiencies and
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malfunctioning of the system soon after installation, it would amount to "deficiency of service". Furthermore, when the deficiencies in the system continued to persist during the warranty period, including the extended period, the suppliers were rightly held to be liable for deficiency in service by the State and National Commission. It was also held that in the light of the specific power conferred under Section 14(1)(c) of the aforesaid Act, damages equivalent to price of goods could be awarded, despite the provisions of Section 12(3) of the Sale of Goods Act, 1930, as the provisions of the 1986 Act are in addition to and not in derogation of any other provision of law.

10. Mr. Vijay Kumar, learned Advocate, who appeared for M/s Fiat India Ltd., urged that the complaint made by the Petitioner herein was without any basis as the vehicle was fully roadworthy and it was the Petitioner who made continuous complaints which, the Respondent attended to for the sake of maintaining good business relations. It was submitted that the manufacturer company went to the extent of even replacing the engine and parts of the gear box to give the Petitioner complete satisfaction. However, there was absolutely no justification for the Petitioner to demand that the vehicle be replaced or that the value thereof, together with the expenses incurred be refunded. It was also urged that the vehicle had been duly certified to be completely roadworthy and it was the Petitioner who was at fault for not having taken delivery of the same, despite the same being ready. It was submitted that the decision of the National Commission did not call for any interference and the Petition was liable to be dismissed.

11. On behalf of the Respondents it was contended that everything possible was done to meet the repeated complaints made by the Petitioner, which even involved the replacement of the engine and other parts. However, instead of taking delivery of the vehicle, the Petitioner continued to insist on replacement of the vehicle which was not contemplated under the warranty given by the manufacturing company when the vehicle was delivered to the Petitioner.

A 12. It was also submitted that, in any event, the agent of a vehicle manufacturer would not be made liable for the defects, if any, in the vehicle and the relief prayed for against Respondent No.2 was entirely misconceived.

B 13. In support of the aforesaid submissions, reference was made to the decision of this Court in *Maruti Udyog Ltd. vs. Susheel Kumar Gabgotra* [(2006) 4 SCC 644], in which it was, inter alia, held that if the manufacturing defect was established, then replacement of the entire item or the replacement of the defective parts, is only called for. In fact, reference was made to the warranty condition which referred only to replacement of only the defective parts and not the car itself. This Court held that from the various documents exhibited it would appear that the manufacturer had indicated that it was necessary to download the engine to trace the problem which has been complained of, but there was no agreement to replace the engine. Moreover, when the manufacturer asked for the vehicle to be brought in for the purpose of downloading the engine, the Respondent did not do so and, accordingly to infer that there was any manufacturing defect in the said background was without any foundation. However, the relief was moulded so that the defective part could be replaced without requiring the purchaser to pay any charge.

F 14. Reference was then made to the decision of this Court in *Hindustan Motors Ltd. vs. N. Siva Kumar* [(2000) 10 SCC 654], in which it was held that when it became impossible to comply with the National Commission's order directing replacement of the Respondent's defective vehicle, since the manufacturer had stopped manufacturing the said model, this Court directed that the money along with interest, compensation and costs were to be paid to the purchaser.

H 15. Having considered the various submissions made on behalf of respective parties, what emerges is the question as to whether the manufacturing company and by extension the dealer/agent was under any compulsion to replace the vehicle

itself when the engine of the vehicle from which certain noises were allegedly emanating had been replaced. It has been explained that an engine operating on diesel makes a rattling noise which does not occur in petrol driven engines and that there was really no manufacturing defect in the vehicle as complained of by the purchaser.

16. In such circumstances, the order passed by the National Commission, impugned in these Special Leave Petitions, does not appear to be unreasonable. For whatever reason, except for a mere 800 kilometers the Petitioner has not used the vehicle after it was delivered and has, on the other hand, made several complaints in an attempt to prove that there were manufacturing defects in the vehicle. The National Commission has taken all these matters into consideration in giving the impugned directions regarding delivery of the vehicle to the Petitioner after having the same properly checked by an independent technical expert who would have to certify that the vehicle was free from any defect when it is delivered.

17. From the facts as disclosed, it appears that apart from the complaint relating to noise from the engine and the gear box, there was no other major defect which made the vehicle incapable of operation, particularly when the engine was replaced with a new one. However, in addition to the directions given by the National Commission, we direct that if the independent technical expert is of the opinion that there are inherent manufacturing defects in the vehicle, the petitioner will be entitled to refund of the price of the vehicle and the lifetime tax and EMI along with interest @ 12% per annum and costs, as directed by the State Commission.

18. In such circumstances, the Special Leave Petitions are disposed of with the above directions.

D.G. Special Leave Petitions disposed of.