

# Paras Jain vs Amazon Seller Services Pvt. Ltd. on 22 September, 2021

**Author: R.K. Agrawal**

**Bench: R.K. Agrawal**

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI  
BEFORE: HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

CONSUMER C  
HON'BLE DR. S.M.

For the Complainant : For the Complainant : Mr. Paras Jain, In person For the Opp.Party : For the Opposite Party : Mr. Joy Basu, Sr. Advocate with Mr. Amit Kr. Mishra, Mr. Mohit Singh, Mr. Turab Ali Kazmi, Ms. Samridhi Hota and Mr. Kank B, Advocates Dated : 22 Sep 2021 ORDER R.K. AGRAWAL, J., PRESIDENT The present Consumer Complaint u/s 2 (1) (d) (i) read with Section 12 (1)(c) of the Consumer Protection Act, 1986 (for short, the "Act") has been filed by the Complainant, Mr. Paras Jain against Opposite Party, Amazon Seller Service Private Limited seeking refund of the amount of 9,119/- paid towards purchase of Mobile Phone along with litigation and transportation cost of 1 lakh and Punitive Damages to the tune of 743,00,00,000/- (Rupees Seven Hundred Forty Three Crore Rupees) for causing legal injury and financial loss to the Complainant as well as innumerable other Consumers.

Pertinently, Complainant has filed IA 4627 of 2017 seeking permission to represent the numerous consumers at large under Section 12(1)(c) of the Consumer Protection Act, 1986.

The facts leading upto the present Complaint are that the Opposite Party is a Private Company running the business of E-Commerce across the Country by selling goods online via its official webpage [www.amazon.in](http://www.amazon.in).

On 23.02.2016, the Complainant purchased a Mobile Phone bearing Model No. Coolpad Note 3 (White 16 GB) from Opposite Party at the selling price of 9,119/- including shipping charges of 120/-. The Complainant contends that after using the Mobile Phone for a couple of days, the Phone started heating up which compelled him to return the same as per Easy Return Policy of the Opposite Party advertised on T.V. Serial, Media and Print Media. Since, the Complainant was not able to click the option of Return/Exchange on their website, he called at the Customer Support of the Opposite Party and was informed that they had changed its Return Policy on the items purchased on or after 07.02.2016. On 27.02.2016, he sent an email to the Opposite Party stating that they had always advertised about Easy Returns and that at the time of purchase, it had not been mentioned that the Refund/Return Policy of the Opposite Party has been changed and it has amounted to Unfair Trade Practice on their part. Vide email dated 02.03.2016 the Opposite Party apprised to the Complainant that if he has received a defective/damaged Phone, he would be eligible only for free replacement and not for refund.

It is averred by the Complainant in the Complaint that even in the Invoice Bill of the Phone, the

option of returning the Phone was given to him and it was also visible in the Order List of the Complainant ever after the purchase of the Phone. He submits that such action/inaction of the Opposite Party is in violation of the Right of Consumers to be informed about the Product and to decide as to whether to purchase the same or not. The Complainant alleges that he purchased the Mobile Phone only being influenced by the Advertisement of the Opposite Party claiming "Easy Returns" and previously he had returned another Mobile Phone on 31.01.2016 and a Universal Car Windshield on 04.07.2016 and received the refund.

Complainant further submits that the Advertisement Standard Council of India (for short, ASCI), an Authority which is responsible for Regulation of Advertisements, in its decision in March 2016 in some Consumer Complaints held that "the advertiser's website communication provides the term and conditions applicable for the claim "Easy Returns". However, the TVC does not have any reference to terms and conditions. The claim "Easy Returns" was therefore misleading by omission of an appropriate disclaimer in the TVC."

It is alleged by the Complainant that the Opposite Party had incurred an expenditure of 743.9 Crores on advertisements and the same amount has to be imposed upon them as punitive damages for attracting Consumers at large by Misleading Advertisements. It is further alleged by the Complainant that the Opposite Party is involved in Unfair Trade Practice by making false promise and running misleading advertisement about Easy Refund of the Product. The Opposite Party is bound to disclose all the necessary information about its Product enabling the Consumers to take a decision as to whether buy the said product or not.

Aggrieved, the Complainant has filed the present Complaint before this Commission seeking following reliefs:-

- "a) To issue a direction to the Opposite Party to refund the amount of 9,119/- which the Complainant paid for the purchase of the mobile;
- b) To issue a direction to the Opposite Party to pay the Litigation Cost and Transportation Cost of 1,00,000/- (One Lac Rupees);
- c) To impose punitive damages of 743,00,00,000/- (Seven Hundred Forty Three Crore Rupees) as per Section-14(1)(d) of the Consumer Protection Act, 1986 on account of causing legal injury and huge financial loss to the Complainant as well as Innumerable Consumers by the Opposite Party through its Unfair Trade Practice of misleading Advertisements and non-disclosure of information.

d) To pass any other order that this Hon'ble Commission deems fit in the interest of equity, justice and conscience."

Vide Order dated 23.05.2017, notice was issued to the Opposite Party to show cause why the Complaint be not treated as a Complaint under Section 12(1) (c) of the Consumer Protection Act, 1986. The Opposite Party tendered its preliminary Written Version on 20.07.2017, denying the contents of the Complaint and raising the preliminary issue that the Complainant has filed the present the Complaint under the guise of being a "class action claim" which is devoid of any merit or material evidence whatsoever.

A Preliminary Objection has been taken that this Hon'ble Commission does not have the Pecuniary Jurisdiction to entertain the Complaint, since the value of goods purchased and services availed by the Complainant is just 9,119/-. The Complainant, in order to justify the Pecuniary Jurisdiction of this Commission, has sought punitive damages to the tune of 743.9 Crores without any cogent material on record. In terms of Section 14(1)(d) of the Act, this Commission is empowered to grant punitive damages in appropriate circumstances after considering case on merits and that such exercise is discretionary in nature. Relying on plethora of decisions of the Apex Court, it is submitted that remedy for inflated claims, such as the present case, must be before a Civil Court On merits, it is pleaded that there exists no prima facie grievance or cause of action, since change in its Return Policy was published in the newspapers in English as well as in Vernacular Language and to buttress his submission he has sought to rely upon Newspaper Articles dated 08.02.2016 and 10.02.2016 published in NDTV Gadget360 and Indian Express which specifically highlighted that the Opposite Party no longer has a return or refund policy for mobile phones. It is further contended that the change in the Return Policy was necessitated in view of blatant misuse of the policy by the Consumers. Certain Consumers were using the Products/mobile phone for a while and simply return the same seeking refund on account of one or the other reasons and this problem was exacerbated by purchase and seeking return/refund of large products such as furniture etc. When a Purchaser is purchasing a Product on an e-commerce platform, he is bound by terms and conditions of that particular e-commerce platform. The Complainant having purchased the Mobile Phone after publicizing of change in policy and agreeing to the terms and conditions of its use, he does not have a surviving cause of action.

It is averred that a Complaint of representative nature u/s 12 (1)(c) needs to fulfill certain conditions. A representative suit can be filed on behalf of numerous consumers if there is common grievance, there is same service provider and consumers seek a common relief. However, in the present Complaint, the Complainant has failed to satisfy the test for a representative suit. The Screenshots of various grievances as addressed by other Consumers of the e-commerce platform, cannot form the basis of a Class Action Complaint as envisaged under section 12(1)(c) of the Act. The present Complaint is a misuse of legal process and is only an afterthought with malafide intention and as such is liable to be dismissed.

We have heard the Complainant appearing in person and Mr. Joy Basu, Senior Advocate for the Opposite Party on the maintainability of the Complaint before this Commission for want of Pecuniary Jurisdiction.

Mr. Paras Jain, Complainant in person, has vehemently argued that Opposite Party had deceived the innumerable Consumers across the Country through its Misleading Advertisements of "Easy Return/Refund Policy" and adopting Unfair Trade Practice and the same can be established by the comments of the innumerable Consumers on Facebook which proves that the Opposite Party is not complying with its "Easy Return" policy.

With respect to the issue of Punitive Damages, the Complainant has placed reliance on Order dated 18.05.2005 passed by this Commission in Bonn Nutrients Private Limited Vs. Jagpal Singh Dara - (2005) CPJ 108 (NC), wherein, while dealing with Misleading Advertisements, it has been held that "In our view, in case of Unfair Trade Practice like the present one, the compensation to be awarded has to be exemplary". It is submitted that the Opposite Party had incurred an expenditure of 743.9 Crore on misleading advertisement of "Easy Return" to cheat the large number of Consumers and thus, punitive damages of the same amount should be imposed upon them as a deterrent factor for them and other similarly placed E-Commerce ventures, so that they make correct and true claims in their Advertisements.

The Complainant has further relied upon the Larger Bench Decision of this Commission in the case Ambrish Kumar Shukla Vs. Ferrous Infrastructures Pvt Ltd. - (2017) 1 CPJ 1 (NC) wherein it has been held that "irrespective of the value of the goods purchased or the service hired and availed of by an individual purchaser/allottee and the compensation claimed in respect of an individual purchaser/allottee, this Commission would have the pecuniary jurisdiction to entertain the complaint if the aggregate of the value of the goods purchased or the services hired or availed of by the numerous consumers on whose behalf or for whose benefit the complaint is filed and the total compensation claimed for all of them exceeds 1 Crore. It is pleaded that this Commission has the valid Pecuniary jurisdiction to decide the present Complaint as the value exceeds 1.00 Crore, which is prayed for on behalf of numerous consumer including the Complainant.

According to the Complainant, as per Concise Law Dictionary edited by Justice Shri Y.V. Chandrachud, the meaning of compensation is "a sum of money to be paid to compensate loss or injury sustained and "Damages" means Compensation for Legal Injury. He further contended that it is the settled principle of Interpretation of Statute that all the provisions of a legislation must be read as a whole to achieve the objective of the legislation. When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified, which is the Rule of ejusdem generis. By the use of legal dictionary meaning having common word "compensation" stated above, the application of Principle of ejusdem generis, the Punitive Damages may easily be construed as a part of compensation in the legislation of Consumer Protection Act, 1986 as a whole and hence, punitive damages is to be included in the amount of compensation and therefore this Commission has valid jurisdiction to decide the subject Complaint. It is submitted by him that in terms of Section 14 (1)(d), the Consumer Fora has power to award the punitive damages.

The Complainant has further stated that the ASCI has framed Advertisement Code for the purpose of self regulating the Advertisements in different sectors and that various authorities and Government of India has given statutory recognition to ASCI. Finally, he urged that change, if any, in the Return/Exchange/Refund policy of the Opposite Party was not informed to the Complainant, nor was the same shown at the time of placing the purchase order for the subject product. The option of returning the product was available even on the Invoice Bill of the Mobile Phone. \ As against this, Mr. Joy Basu, Learned Counsel appearing for the Opposite Party strenuously urged that the Complainant has admittedly purchased the mobile phone on 23.02.2016 but before that the Opposite Party had changed its "Return Policy" on 07.02.2016 and having purchased the Mobile Phone subsequent to the change in "Return Policy, the Complainant cannot claim that his purchase should be treated as per old policy. The change in "Return Policy" was given wide coverage in both print and electronic media. The Complainant has failed to satisfy the Pecuniary Jurisdiction of this Hon'ble Commission as he has claimed a sum of 1,09,119/- only i.e. 9,119/- for purchase of Mobile and 1 lakh as compensation towards litigation and transportation costs. The Complainant has claimed a sum of 743.9 as punitive damages which do not form a part of compensation. The "Punitive Damages" are not a matter of right and are dependent on the discretion of the Consumer Fora. The amount of 743.9 crores which according to the Complainant has been spent by the Opposite Party on its advertisements, cannot form the basis of compensation and the contention of the Complainant in this regard is without any basis and arbitrary. The Complainant cannot claim an inflated and hypothetical figure without any actual casual linkage with the purported cause of action. In the case of Indian Trading Corporation through Kewal Kishan, Registered Partner Vs. State Bank of India - 2003 (2) CPC 561, this Commission observed that "If an amount is claimed which has no relevance to the true facts of the case voluminous evidence will have to be unnecessary laid and great deal of time spent which otherwise could be utilized for looking into the grievances of other genuine consumers." Under Section 14(1)(d) of the Act, the Consumer Fora is empowered to award punitive damages after considering the facts of the case on merits and evaluating the evidence on record.

He further submitted that this Commission in the case of Neeraj Kumar Gupta and Ors. V. Panchtatva Promoters (P) Ltd. And Ors.- MANU/CF/0313/2018, has held as under:-

"8. The decision of the larger Bench of this Commission in the matter of Consumer Case No.97 of 2016, Ambrish Kumar Shukla & Ors. Vs. Ferrous Infrastructure Pvt. Ltd., decided on 07.10.2016 (NC), clearly states that the pecuniary jurisdiction shall be decided by the consideration amount and the compensation sought. In the present case, the total consideration of the two flats of the complainants is Rs.76,88,528/-. The item Nos.5 & 6 of the above table cannot be considered as compensation as these are the amounts, which have already been paid to the opposite parties and have been requested for refund. Item Nos.7 & 8 are litigation expenses, which cannot be considered as part of the compensation. Therefore, amounts mentioned against item Nos.5, 6, 7 & 8 cannot be considered for deciding the pecuniary jurisdiction. Amounts against item Nos.3 & 4 of the table have been claimed as damages for mental agony and harassment. No basis has been given for claiming such high damages. Fora dwelling unit of Rs.44,19,468/-, the damages

worth Rs.20,00,000/- has been demanded. Similarly, for another unit of Rs.32,69,060/- the compensation for mental agony has been claimed for Rs.10,00,000/-. It seems that the inflated compensation has been demanded to claim and justify the pecuniary jurisdiction of this Commission."

21. Mr. Joy Basu also urged that in the case of Saurabh Saini Vs. New Delhi Centre for Sight Private Limited - 2018 SCC Online NCDRC 90, this Hon'ble Commission observed as under:-

"10. Considering the entirety of the facts in the instant case, the complainant claims have incurred expenditure on the treatment to the tune of few lakhs for medical treatment but, has preferred claim in respect thereof, to the tune of Rs.6,03,20,000/- which appears to be towards non-pecuniary damages. The complainant has not placed anything on record about the break-up of his claim. The compensation for medical negligence or deficiency in service in the treatment has to be commensurate with the resultant loss and injury to the patient or his heirs. In my view, the unrealistic claim has been made only with view to confer pecuniary jurisdiction on this commission, which cannot be permitted."

22. Further, reliance has also been placed by him on the judgment of this Commission in Femy Vs. Kavitha - 2012 SCC Online NCDRC 855: (2012) NCDRC 584.

23. It is also asserted that a mere averment of Unfair Trade Practice without any cogent evidences qua losses suffered by the Complainant is not enough to claim or award of relief. Counsel has placed reliance on the judgment rendered by the Hon'ble Supreme Court in General Motors (I) Pvt Ltd. Vs. Ashok Ramnik Lal Toal and Anr.- (2015) I SCC 429.

24. There is no dispute with regard to the fact that the Complainant has purchased the Mobile Phone on 23.02.2016. However, before the said date, the Opposite Party has changed its "Return Policy" on 07.02.2016. The main grievance of the Complainant is that when the Mobile Phone was purchased by him there was no information/disclosure about the change in Easy Return Policy by the Opposite Party w.e.f. 07.02.2016 and even in the Invoice Bill of the Phone, the option of returning the Phone was given to him and further it was also visible in the Order List of the Complainant ever after the purchase of the Phone. It is further his case that the Opposite Party by publishing the misleading advertisements about the "Easy Return Policy" has cheated innumerable Consumers and on behalf of them the Complaint has been filed in a representative suit. However, main thrust of the arguments of the Opposite Party is that the Complainant was not entitled for refund of the amount of mobile phone due to change in Return Policy w.e.f. 07.02.2016; the Complainant has failed to establish the Pecuniary Jurisdiction of this Commission as the Punitive Damages cannot be treated as part and parcel of the Compensation.

25. Having heard the rival contentions of the parties and after perusing the facts of the case, judgements referred to above and the Written Submissions filed by the parties, we are of the considered view that the Complaint filed u/s 12(1)(c) by the Complainant as Joint Complaint on behalf of the similar situated Consumers is not maintainable for the reasons recorded hereinafter and deserves to be dismissed.

26. The main question which falls for our consideration is as to whether the punitive damages claimed by the Complainant can be treated as part of the compensation for determining the pecuniary jurisdiction of this Commission.

27. Recently, the Hon'ble Supreme Court in the case of M/s Magma Fincorp Ltd versus Rajesh Kumar Tiwari - (2020) 10 SCC 399 while dealing with a case of re-processioning of the Vehicle under Hire Purchase Agreement has held that the Punitive Damages cannot be treated as form of the compensation. The relevant paragraph Nos. 62 and 91 of the judgements are as under:-

"62. The proviso to Section 14(1)(d) of Consumer Protection Act, 1986 empowers the District Forum to grant punitive damages in such circumstances as it deems fit. Punitive damages are not generally awarded in cases of breach of contract unless the act is so reprehensible that it calls for punishment of the party in breach, by imposition of punitive and/or exemplary damages. Compensation which is compensatory, has to be assessed taking into account relevant factors, such as the loss incurred by the claimant, though some amount of guess work and/or estimation may be permissible. In the instant case, the District Forum did not even undertake the exercise of assessment of the loss/damages, if any, suffered by the complainant by reason of non-service of notice before taking possession of the vehicle.

91. A forum constituted under the Consumer Protection Act has, as observed above, the power to award punitive damages. Punitive damages should, however, be granted only in exceptional circumstances, where the action of the Financier is so reprehensible that punishment is warranted. To cite an example, where a Financier erroneously and/or wrongfully invokes the power to repossess without notice to the hirer, causing thereby extensive pecuniary loss to the hirer or loss of goodwill and repute, a forum constituted under the Consumer Protection Act may award punitive damages

28. From a bare perusal of the afore-extracted paragraphs, it is amply clear that the punitive damages u/s 14(1)(d) of the Act cannot be granted by the Consumer Fora in cases of breach of contract unless the act is so reprehensible that it calls for punishment of the party in breach, by imposition of punitive or exemplary damages. Even a compensation which is compensatory of the loss suffered has to be awarded taking into consideration the relevant factors such as the loss incurred by the Claimant subject to some guess work. Punitive Damages have to be granted only in exceptional circumstance where the action of the party in breach is so reprehensible that

punishment is warranted. Thus, Punitive Damages cannot be taken into consideration while determining the Pecuniary Jurisdiction of the Fora created under the Act. Even otherwise, in the present case, the Complainant has purchased the Mobile Phone for a sum of 9,119/- on 23.02.2016 just after the 16 days of the change in "Return Policy" of the Opposite Party on 07.02.2016. There cannot be a denial to the fact that some of the Purchasers are purchasing the products on the online website and after using the said product for few days, seeking the refund of the amount paid by them. This was main reasons because of which the Opposite Party changed its policy of Easy Return. In case the Complainant has received the defective mobile phone, the remedy was still available with him to get replaced the phone despite the change in Return/Refund Policy". This Apart, the Opposite Party has also published in the newspaper, namely the Indian Express dated 10.02.16 about the change in its Return Policy with the Heading "Amazon no longer has a return and get refund policy for mobiles". The said information was also published in NDTV Gadget360 on 08.02.2016 with the heading that "Mobile Purchased from Amazon India No Longer Eligible for Refund". In so far as the option appearing in the Invoice Bill of the Mobile Phone regarding the refund, is concerned, we are of the considered view that since there was a gap of only 16 days from the date of change of policy, i.e. 07.02.2017 and purchasing of mobile phone, i.e. 23.02.2017, it was not possible to rectify the said mistake or reprint the Invoice Bill.

In these circumstances, in our considered view, it is not a fit case for awarding exemplary punitive damages as observed by the Hon'ble Supreme Court in Magma Case(supra) and action/inaction of the Opposite Party does not warrant any punishment. Consequently, the Complaint is dismissed as not maintainable for want of pecuniary jurisdiction. The Complainant may be advised to seek remedy of his grievance before the appropriate forum in accordance with law. However, the time spent before this Commission from the date of filing of the complaint till passing of this order shall be excluded while computing the limitation u/s 14 of the Limitation Act in view of the observations made by the Hon'ble Supreme Court in Laxmi Engineering Works vs P.S.G. Industrial Institute - 1995 SCC (3) 583. It is also made clear that we have not expressed any opinion on the merits of the case.

.....J R.K. AGRAWAL PRESIDENT ..... DR. S.M. KANTIKAR MEMBER