Supreme Court of India
Tata Engineering & Locomotive Co. ... vs Gajanan Y. Mandrekar on 5 May, 1997
Bench: K. Ramaswamy, D. P. Wadhwa

PETITIONER:
TATA ENGINEERING & LOCOMOTIVE CO. LTD. & ANR.

Vs.

RESPONDENT:
GAJANAN Y. MANDREKAR

DATE OF JUDGMENT: 05/05/1997

BENCH:
K. RAMASWAMY, D. P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted. we have heard the counsel on both sides. This appeal by special leave arises from the order, made on September 23, 1996 passed by the National Consumer Disputes Redressal Commission in F.A. No. 784/94.

The respondent had booked commercial vehicle, more commonly known as a 'Tipper Truck' with registration No. SK 1210/b/36 on May 7, 1991. He purchased the vehicle after securing loans from a nationalised Bank on usual commercial rate of interest. After running the vehicle as driver-cum-owner for 9000 Kms. it was found that the tyres were worn out completely, front axil pins of the vehicle were not fixed properly; at a speed of 40 Kms. per hour the vibration of the vehicle (empty) was very high as the cabin was completely loose etc. He mentioned these defects in his letter dated March 10,1992, after eight months. Subsequently, he reiterated the same in his different letters addressed to the agent, through whom he had purchased the vehicle. Finally, by letter dated May 2, 1992, after intimating that in spite of running the vehicle for 18000 to 18500 kms., despite repairs, the vehicle continue to give the same trouble. In spite of the Warranty of Service, the trouble was not done away. Accordingly, he filed a complaint with the State commission. The commission after considering the evidence and hearing the counsel on both sides, found that the appellant was liable to pay a total amount of Rs. 4,81,132-17 with interest at the rate of 18% per annum w.e.f. July 28,1992. That was confirmed on appeal by the National Commission. thus this appeal by special leave.

Shri F.S. Nariman, learned senior counsel appearing for the appellant contends that the appellant is not so much on the quantification of the damages awarded in this case; rather, they want to vindicate the principle on which the damages are awarded in such type of complaints. According to him, the complaint was laid after 8 months from the date of the delivery; that too after the vehicle was used to cover a distance of 18000 to 18500 Kms.; the complaint was laid in August 1992. When the Commissioner appointed gave his report on April 10,1993, the vehicle had cover a distance of 65000 kms. The State commission passed the order on September 24,1994 by which date a further distance of more than another 25000 to 30000 kms. would have been run. Under these circumstances, proportionate deduction for use of the vehicle would have been run. under these circumstances, proportionate deduction for use of the Vehicle would have been run. Under these circumstances, proportionate deduction for use of the vehicle would have been given. We find force in the contention. It is not the case that during the sai period the vehicle was kept used. When the vehicle was being used with the same defects as pointed out, necessarily the purchaser is required to be compensated for not delivering the vehicle in good condition as per the warranty after deduction towards the use of the vehicle. In view of the facts and circumstances, we think that 1/3rd of the compensation awarded by the Commission may by deducted towards the user of the vehicle for the period in question. For the rest of the amount, the order of the Commission is confirmed .

The appeal is accordingly allowed in part. No costs.