

Our ref: **201505-0125**

ASSESSMENT:

Summary of complaint

The complainant bought a wheel chair that broke down three times in four months due to “bad design, attention to detail and substandard workmanship”. The manufacturer (Supplier) refused to refund the complainant.

Summary supplier’s response

The supplier indicated that the complainant had required a wheelchair suitable for outdoor use. As his medical aid refused to pay for the 4x4 model recommended by the supplier, he decided instead to order a custom-built Gazelle 250, which is not intended for rural excursions into the bush. The supplier maintains that any defects that there may be came into existence after the sale took place. In particular, it asserts that the shearing of the steel came about by inappropriate use by the consumer or accident damage. The supplier’s response was accompanied by the statements of three of its employees who more or less supported its allegations.

Investigation

Arrangements were made to have the wheelchair examined by an independent expert. His report (attached as Annexure “A”), which pointed to various problems with the wheelchair, was submitted to the supplier for comment. It responded (attached as Annexure “B”), disputing or explaining virtually all of the findings of the report.

Conclusion

Owing to the dispute of fact as to the cause of the damage/ defect by the parties and the lack of a firm finding in this regard by the expert, we are unable on the papers before us to determine where the fault lies; whether the wheelchair was inherently defective or abused/ involved in a collision.

We are in any event not in a position to decide whether the defects in question are sufficiently material in nature to give rise to the right to a refund in terms of section 56(2) of the Consumer Protection Act (our case: (201443261013) [2014] ZACGSO 9 on <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACGSO/2014/9.html&query=material%20defect> and the tribunal case of Hyundai Automotive SA (Pty) Ltd v t/a Kia Motors Roodepoort (NCT/4734/2012/60(3)&101(1)) [2014] ZANCT 8 at <http://www.saflii.org/za/cases/ZANCT/2014/8.html>).

Recommendation

In view of our difficulty in arriving at a definitive finding, we suggest that if the complainant wishes to take the matter further, he approaches the National Consumer Regulator with a view ultimately to getting the matter to the Tribunal for a ruling. As an alternative, it is suggested that he gives the

supplier one last opportunity to repair the wheelchair, as it originally offered. We can assist with facilitating the process if this route is chosen.

Kindly advise should you want the supplier to attend to the repairs alternatively you may now take such other steps as you wish or refer the complaint to the National Consumer Commission in accordance with section 71:

71. (1) Any person may file a complaint concerning a matter contemplated in section

69 (1)(c)(ii) or (2)(b) with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.

The Commission may be contacted at:

Tel: 012 940 4500

Email: complaints@thencc.org.za

Yours faithfully

Neville Melville

Ombudsman