

## Tata Motors vs Dhanvir Singh on 2 February, 2016

2nd Additional Bench

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB  
DAKSHIN MARG, SECTOR 37-A, CHANDIGARH

First Appeal No.66 of 2015

Date of institution: 19.1.2015

Date of Decision: 2.2.2016

Tata Motors Ltd., Passenger Car Business Unit, KD-03, Car Plant Sector  
15 & 15A, PCNTDA Chikhali, Pune 401501.

Appellant/OP No. 3

Versus

1. Shri Dhanvir Singh son of Shri Jagsir Singh, R/o V.P.O. Wajidke,  
Tehsil and District Barnala.

Respondent No.1/Complainant

2. Mehta Motors, Bibi Wala Chowk, Bathinda, Punjab

3. Gill Garyson Motors Pvt. Ltd., Sherpur Chowk, G.T. Road, Ludhiana.

Respondents/Op Nos. 1 & 2

First Appeal against the order dated 9.9.2014  
passed by the District Consumer Disputes  
Redressal Forum, Bathinda.

Quorum: -

Shri Gurcharan Singh Saran, Presiding Judicial Member  
Mrs. Surinder Pal Kaur, Member

Present: -

For the appellant	:	Sh. Sanjeev Roy, Advocate
For respondent No.1	:	Ex.-parte.
For respondent No.2	:	Sh. Sandeep Jasuja, Advocate
For respondent No.3	:	Sh. Sourabh Goyal, Advocate

Gurcharan Singh Saran, Presiding Judicial Member

ORDER

The appellant/OP No.3(hereinafter referred as OP No. 3) has filed the present appeal against the order dated 9.9.2014 passed by the District Consumer Disputes Redressal Forum,

Bathinda(hereinafter referred as the District Forum) in consumer complaint No. 66 dated 10.1.2014 vide which the complaint filed by respondent No.1/complainant(hereinafter referred as complainant) was partly accepted with costs of Rs. 5,000/- against Op Nos. 2 & 3 to repair the car of the complainant as per the warranty conditions whereas complaint against Op No. 1 was dismissed.

2. Complaint was filed by the complainant under Consumer Protection Act, 1986 (in short 'the Act') against the OPs on the averments that complainant purchased a brand new Tata Indica Vista LX TDI-III with Engine No. 47514BXYP10527 Colour P-White from Op No. 1 for a sum of Rs. 5,18,000/- against retail invoice No. 7883 dated 30.3.2012 and temporary number PB-03-W-Temp-6345 dated 30.3.2012 valid upto 29.4.2012 was issued. Op No. 1 issued insurance policy No. 253310 valid for the period 30.3.2012 to 29.3.2013. However, the said car suddenly developed technical snag in the engine and engine of the said motor car started giving loud noise and went off the road on 5.6.2012 in the area of Barnala. Matter was reported to Op No. 1 through telephonic message. On the advice of Op No. 1, the matter was reported to Op No. 2. Mechanic of OP No. 2 alongwith recovery Van visited the Barnala and took the possession of the said car and took it to the Workshop of OP No. 2 at Ludhiana. Job Card No. JC Garyson-LU-113.001949 was prepared. The said car was given to the complainant after giving full assurance that all the defects have been removed. However, on 25.6.2012, the said motor car all of a sudden stopped and engine of the car became non-functional. It was brought to the notice of Op no. 2. However, Op No. 2 on 2.7.2012 refused to provide any assistance. The matter was also reported to Op no. 1 and the person, who attended the car apprised that the matter is being taken up with the manufacturer and car of the complainant thereafter will be replaced. However, Op No. 1 had been putting off the matter and finally on 9.7.2012 refused to take any action. Complainant had purchased the said motor car from Op No. 1 for personal use. Refusal to repair or replace of the engine/car amounts to deficiency in service on the part of Ops. Hence, the complaint with a direction to Op No. 1 & 3 to replace the motor car with brand new car or to refund the amount of Rs. 5,18,000/-, pay Rs. 1,00,000/- on account of injuries caused to the reputation of the complainant and pay a sum of Rs. 50,000/- on account of mental tension, agony and physical harassment, Rs. 10,000/- on account of costs of proceedings.

3. Complaint was contested by Op Nos. 1 & 3 whereas Op No. 2 was ex-parte before the District Forum. Op No. 1 in its written reply/version took the preliminary objections that the complaint was not maintainable in this Forum; complaint was devoid of any cause of action; complainant was not a consumer qua this Op; complainant had not approached this Forum with clean hands, rather, he distorted and twisted the true facts to draw undue benefit; complainant had never come to the Service Station of this Op after purchase of the car; complainant had not complied with provisions of Section 13(1)(c) of the Act; intricate question of facts and law were involved in the present complaint, which cannot be decided in the summary procedure, therefore, the matter was required to be relegated to the Civil Court; complainant was stopped by his act and conduct and acquiescence to file this complaint; this Forum had no jurisdiction to try this complaint and that the complaint was false, frivolous and vexatious to the knowledge of the complainant, therefore, liable to be dismissed under Section 26 of the Act. On merits, purchase of the car from this Op was admitted. At the time of purchasing the car, complainant was satisfied with the running of the car. Complainant had never approached this Op telephonically on 5.6.2012. It was denied that on the advice of Op No.

1, mechanic of Op No. 2 had visited Barnala to take possession of the car in question. This op had full fledged service station and the allegations that the Op No. 1 suggested the problem to be got rectified from Op No. 2 was devoid and afterthought. No such matter was reported to this Op. Otherwise averments in the preliminary objections were reiterated. It was denied that there was any deficiency in service on the part of this OP. Complaint was without merit, it be dismissed.

4. Op No. 3 in its reply took the preliminary objections that the complainant had no grievance and cause of action against this Op; there was no privity of contract between complainant and this Op, therefore, he was not a consumer as defined under Section 2(1)(d) and 2(i)(g) of the Act. The relationship between Ops are on principle to principle basis. It was submitted that this Op cannot be held liable for any independent act and/or omission committed by other Op. Therefore, for the act of one Op other Op cannot be held responsible. There was no expert opinion as defined under Section 13(1)(c) of the Act. Further the warranty was limited to repair or replace the parts, which in opinion of this Op was defective and had referred Clause 2 of the warranty terms. The dispute involved lot of technicalities, examination and cross examination of witnesses, inquiry determination of complicated question, as such, the complaint cannot be agitated before the Forum and the same be relegated to the Civil Court. There was no question or deficiency in service on the part of this Op and that the complaint was beyond the purview of the Act. On merits, the averments taken in the preliminary objections were reiterated. It was denied that there was any defect in the vehicle. There was no deficiency in service on the part of this Op. Complaint was without merit and it be dismissed.

5. The parties were allowed by the learned District Forum to lead their evidence.

6. In support of his allegations, the complainant had tendered into evidence retail invoice Ex. C-1, temporary RC Ex. C-2, private car package policy Ex. C-3, job card Ex. C-4, service invoice Ex. C-5, affidavit of Dhanvir Singh Ex. C-6. On the other hand, OP No. 1 had tendered into evidence affidavit of Amarjit Mehta Ex. Op- 1/1, invoice and sale certificate Ex. Op-1/2, delivery receipt Ex. Op- 1/3, gate pass Ex. Op-1/4.

7. After going through the allegations in the complaint, written versions filed by Ops, evidence and documents brought on the record, the complaint was allowed as referred above.

8. Aggrieved with the order passed by the learned District Forum, appellant/Op No. 3 has filed the present appeal.

9. In the appeal, it was pleaded that respondent No. 1 obtained the award from the Forum by way of mis-representation. The relationship between the Dealer and its manufacturer are governed in view of the terms and conditions laid down in the agreement entered into between the parties and their responsibility is on principle to principle basis. The directions passed by the District Forum to Op Nos. 2 & 3 to repair car of the complainant as per warranty conditions are beyond jurisdiction. The complainant has not impleaded M/s Goyal Motors as necessary party to the complaint. Impugned order was passed without appreciating the evidence on record. It is liable to be set-aside.

10. We have heard the learned counsel for the parties.

11. As is revealed from the pleadings of the parties, complainant had purchased one Tata Indica Vista LX TDI-III purchased a brand new Engine No. 47514BXYP10527 Colour P- While. Op No. 1 had temporary registration No. PB-03-W-Temp-6345 and vehicle insured with National Insurance Company. It developed a snag. Its job card no. JC Garyson-LU-113.001949 was prepared. The same is Ex. C-5 vide which assembly turbo charger of Rs. 15,607.03p and bare engine having 279001990133 was replaced worth Rs. 98,508.11, therefore, version of the complainant that on 7.6.2012 engine was replaced and allegations of the complainant are that the vehicle was taken to the Workshop of Op No. 2, who after necessary repair handed it over to the complainant on 23.6.2012. In the bill Ex. C-5, nothing was charged from the complainant. It was further alleged that on 25.6.2012 again the car of the complainant suddenly stopped and engine of the car became non-functional. Op No. 2 refused to provide any service. Call was given to Op No. 1, who said that the matter was being taken with the manufacturer and that the snag was not removed by Ops. There can be no job card as Op No. 1 as well as manufacturer had refused to attend the car. The said version given by the complainant in his complaint and further corroborated by his own affidavit, was not contradicted by Ops. Accordingly, the District Forum has passed the order with the direction to Op No. 2 & 3 to rectify the defect in the car as per the terms and conditions of the policy. Therefore, the defect, if any, is to be rectified by Ops according to the terms and conditions of the policy so the order is justified. Counsel for the appellant was unable to convince that in case they did not attend to the complaint of the complainant and failed to rectify the defect within the warranty period then how it is not a consumer dispute. The order is justified and is within the parameters of warranty terms.

12. Counsel for the appellant was unable to convince before this Commission how this order is incorrect order. We are of the opinion that the order passed by the District Forum is justified. Therefore, it is hereby upheld.

13. We do not find any merit in the appeal and the same is dismissed with no order as to costs.

14. The appellant had deposited an amount of Rs. 2500/- with this Commission in the appeal. This amount with interest accrued thereon, if any, be remitted by the registry to respondent No. 1/complainant by way of a crossed cheque/demand draft after the expiry of 45 days, from the despatch of the order to the parties; subject to stay, if any, by the higher Fora/Court.

15. Remaining amount, if any due, shall be paid by the appellant to respondent No. 1/complainant within 30 days from the receipt of the copy of the order.

16. The arguments in this appeal were heard on 18.1.2016 and the order was reserved. Now the order be communicated to the parties as per rules.

17. The appeal could not be decided within the statutory period due to heavy pendency of Court cases.

(Gurcharan Singh Saran)  
Presiding Judicial Member

February 2, 2016.  
as

(Surinder Pal Kaur)  
Member