

# Ram Chandra Son Of Sh. Kirpal Singh, vs Atul Auto Limited, on 25 January, 2011

2nd Bench

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB,  
SCO NOS.3009-12, SECTOR 22-D, CHANDIGARH.

First Appeal No. 996 of 2009

Date of institution : 14.7.2009

Date of Decision : 25.1.2011

Ram Chandra son of Sh. Kirpal Singh, resident of Village Jhill, Sirhind Road, Patiala  
(wrongly mentioned in the appeal as Raj Kumar s/o Kalu Ram resident of House No. 456, Sector-1, Pandit P.O. Peetal, Tehsil Guhla, District Kaithal (Haryana))  
....Appellant.

Versus

1. Atul Auto Limited, 8-B, National Highway, Near Microwave Tower, Shapar Verabal, District Rajkot, Gujarat through its Manager.
2. Manglam Autos, Adj. Kartar Singh Oil Co. Rajpura Road, Patiala through its Partner.
3. HDFC Bank Limited, Leela Bhawan, Patiala through its Branch Manager
4. Khushbu Auto Finance Limited, Jimmy Tower, Opposite Swami Naryan Gurukul Gondal Road, Rajkot (Gujarat).

...Respondents.

First Appeal against the order dated 25.11.2008 of the District Consumer Disputes Redressal Forum, Patiala.

Before:-

Shri Inderjit Kaushik, Presiding Member.

Shri Piare Lal Garg, Member.

Present:-

For the appellant	:	Sh. A.K. Gupta, Advocate
For respondents No. 1-2	:	Sh. R.S. Modi, Advocate for Sh. Mohd. Yusuf, Advocate
For respondent No.3	:	Sh. Sandeep Suri, Advocate

For respondent No.4 : None.

INDERJIT KAUSHIK, PRESIDING MEMBER:

Appellant/complainant(hereinafter called 'the appellant') has filed this appeal against the order dated 25.11.2008 passed by the learned District Consumer Disputes Redressal Forum, Patiala(in short "the District Forum").

2. Appellant filed the complaint under Section 11 & 14 of the Consumer Protection Act(hereinafter called the 'Act'). It was pleaded that the appellant is a 'consumer' and he purchased a three wheeler from respondent No. 2 vide bill dated 12.8.2006(wrongly written instead of 15.8.2006). Respondent No. 1 is the manufacturer of the three wheeler. The said three wheeler is on hire purchase agreement with respondent No. 3 and respondent No. 4 is the financier of the three wheeler. Appellant purchased the said three wheeler from respondent No. 2 to earn his livelihood.

3. In the month of October, 2006 problem started with the engine of the three wheeler and appellant took the three wheeler to respondent No. 2 and after checking respondent No. 2 told that its engine has ceased and asked the appellant to leave the three wheeler and they will change new engine after getting it from Gujarat and charged Rs. 1,522/- as fair. After 12 days three wheeler was returned to the appellant with a changed engine but in the month of October 2006, the engine of the three wheeler developed problem and it was taken to respondent No. 2. The appellant was told that the defective engine will be got changed and charged Rs. 1522/- and after 12 days the three wheeler was returned with the changed engine. On both the occasions the appellant requested respondent No. 2 to issue receipt of Rs. 1522/- but it was not issued. In the month of December 2006, the engine of the three wheeler again developed the problem and it used to heat up and consume more oil than the required. The appellant got changed the clutch plate frequently but the three wheeler use to stop suddenly and the appellant escaped accident on many times. In the month of December 2006, appellant requested respondent No. 2 to replace the defective engine of the three wheeler with the new engine and remove its defect but he put off the matter on one pretext or the other and ultimately it was told that there is major defect in the engine but nothing can be done.

4. The appellant is not having any source of income and three wheeler is not in working condition and the appellant is finding very difficult to survive and he is unable to deposit the installments. Respondents No. 3 & 4 are pressurizing the appellant to pay installments which he is unable to pay. It was told to the appellant that three wheeler will cover 45 Kilometers per litre but it gave only 27-28 Kms. per litre. The fact regarding the less mileage was also brought to the notice of respondent No. 2 but the respondents have not paid any heed and this was deficiency in service on their part and prayed that the respondents be directed to replace the defective engine of the three wheeler with a good engine of the reputed company and to set right other major defects and further the respondents be directed to pay Rs. 3,000/- for harassment and mental tension and Rs. 5,500/- as litigation expenses.

5. In the reply filed on behalf of respondents No. 1 & 2, it was admitted that three wheeler was purchased by the appellant on 15.8.2006. The three wheeler was financed by respondent No. 4 and

is bearing engine No. FA06G9021120, chassis No. is A06G49963 and is on hire purchase agreement with H.D.F.C. bank.

6. Service schedule has been described by the manufacturer i.e. respondent No. 1 and it is mandatory to get it serviced at regular intervals for good working of the vehicle and to keep it covered under warranty. 1st service was to be carried out within 30 days from the purchase of the vehicle or within 1000 Km. whichever is earlier. 2nd service was to be carried out at 4000 Km. or 60 days, whichever is earlier. 3rd free service was to be carried out at 7000 Km. or 90 days whichever is earlier. 4th free service was to be carried out at 10000 Km. or 120 days whichever is earlier. 5th free service was to be carried out at 13,000 Km. or 150 days whichever is earlier. 6th free service was to be carried out at 16000 Km. or 180 days and further services were to be carried out at regular intervals as per schedule but are paid services. The owner's manual contains free service coupons as well as terms and conditions of warranty. It also contains information about operation, maintenance etc. of the vehicle. At the time of sale of the vehicle an official of respondent No. 2 explained about the service schedule, maintenance, terms and conditions of warranty to the purchaser. It was clearly told to the purchaser that the warranty will become null and void if the service schedule as prescribed is not followed.

7. In the present case engine developed problems due to the negligence of the appellant and there was no manufacturing defect or any deficiency or negligency in service on the part of the answering respondents. The appellant brought the vehicle for 1st free service on 30.8.2006 and at that time 1051 Kms. were covered. 2nd free service was done on 2.10.2006 when the vehicle had covered 4023 Kms and on both the occasions no complaint was reported. 3rd free service was done on 8.11.2006 at 8692 Kms. This was not as per the schedule because as per the schedule the service was to be carried out at 7000 Kms but still no complaint in the engine was reported. 4th free service was done on 13.12.2006 when the vehicle had covered 12893 Kms.. This service was also out of the service schedule because the service should have been carried out at 10000 Kms. but no problem in the engine was reported even in this service. Appellant brought the vehicle for 5th service on 5.1.2007 at 15669 Kms. This service also should have been carried out at 13,000 Kms. and no complaint in the engine was reported.

8. Appellant again brought the vehicle on 5.1.2007 when the vehicle had covered 15669 Km. and a complaint of high engine oil consumption was reported. It was an engine seizure case. This problem has occurred as the appellant had not followed the service schedule properly. The engine developed problems due to the negligence of the appellant and there was no manufacturing defect or any deficiency or negligency in service on the part of the answering respondent. The warranty given by respondent No. 1 became null and void as the service schedule was not followed but still as a goodwill gesture the engine was overhauled free of cost and no amount was charged. The appellant's representative again brought the vehicle for 6th free service on 27.2.2007 when the vehicle had covered 21556 Kms. This service was also out of service schedule as the service should have been carried out at 16000 Km but no problem was reported.

9. The question of changing the engine or vehicle did not arise as no problem was reported before 5.1.2007. The engine of the vehicle was overhauled when engine developed problem due to

negligence of the appellant himself. Respondent No. 1 claims an average of 36 Km per litre  $\pm 2$  in standard conditions. Average of 27-28 Kms. on road at pay load is a very good mileage. All other allegations were denied and it was prayed that the complaint may be dismissed.

10. In the reply filed on behalf of respondent No. 3, legal objections were taken that the appellant is not a 'consumer' as he has not purchased anything from respondent No. 3 nor obtained any loan and the District Forum has no jurisdiction, the vehicle in question is commercial one and the complaint is not maintainable, appellant has not come to the District Forum with clean hands and the complaint is bad for mis-joinder of parties. On merits, it was pleaded that respondent No. 4 has obtained the finance from respondent No. 3 and said three wheeler is on hire purchase agreement with H.D.F.C. Bank and respondent No. 4 is channel business partner of H.D.F.C. bank. Respondents No. 3 & 4 advanced the loan being financier and they have every right to recover the same. Respondent No. 4 is a business associate of respondent No. 3. For replacement of engine, respondents No. 3 & 4 have no concern. Three wheeler is under hire purchase agreement and respondent No. 4 have every right to take possession of the same and there is no deficiency in service on the part of respondents No. 3 & 4. All other allegations were denied and it was prayed that the complaint may be dismissed.

11. Learned District Forum after discussing the pleadings of the parties observed that the warranty period was for nine months. Under the warranty the respondents were responsible for the removal of the defects in the working of the vehicle but no defect was reported during the warranty period and there is no deficiency in service on their part and dismissed the complaint.

12. Aggrieved by the impugned order dated 25.11.2008 of the District Forum, the appellant has come up in appeal.

13. We have gone through the pleadings of the parties, perused the record of the learned District Forum, heard the learned counsel for the parties and have gone through the written arguments submitted by the appellant as well as respondents No. 1, 2 & 4.

14. In the written arguments filed on behalf of the appellant, it was pleaded that the three wheeler in question was purchased from respondent No. 2 at Patiala vide bill dated 15.8.2006 and after few months of the purchase the problem started occurring in the three wheeler and the same was repaired again and again and the respondent assured that they will change the defective engine with the new one. The job sheets brought on record by the respondents clearly shows that the service was done within the warranty period. The signature of the appellant were forged on all the job sheets i.e. Exs. R-5 to R-11 and the signatures of the appellant do not tally on this. The defect in the engine was reported well within the time within the warranty period and even in the job sheets it was alleged that the engine was overhauled on 30.12.2006 which clearly show that the defect was reported well within the warranty period. The District Forum has passed the impugned order under appeal ignoring the fact that the problem occurred in the engine was a manufacturing defect and it was reported well within the period of warranty. The District Forum dismissed the complaint on the ground that the appellant has filed the complaint after the expiry of warranty period which is against the law and cause of action has to be seen which was not at all taken into consideration by the

District Forum. The appellant examined a material witness Manjit Singh, who worked as a mechanic in the Manglam Autos Ltd. and no evidence was led by the respondents to rebut the same and prayed that the appeal be accepted.

15. In the written arguments filed on behalf of respondents No. 1 & 2, it was submitted that the impugned order under appeal passed by the District Forum is a well reasoned order and has been passed after considering the evidence on record. According to appellant, the engine of the vehicle developed problem due to manufacturing defect and it was alleged that respondents No. 1 & 2 did not attend to the complaints properly and changed the engine with the old one. Appellant has alleged that he was given warranty of two years and the vehicle was to give average of 45 Km/litre but it gave the average of 28 Km/litre. The answering respondent examined two witnesses and also placed on file documents Ex. R-5 to R-13 and it was proved on record that there was no negligence or deficiency in service on the part of the answering respondent and the appellant himself was negligent in maintaining the vehicle. No evidence was brought on record to prove that an amount of Rs. 1522/- was charged from the appellant as carriage charges. The service of the vehicle was carried out strictly as per the service schedule and no benefit of warranty can be given. Appellant was negligent for not getting the servicedone at a given time. No problem was reported in the engine after 30.12.2006. The engine of the vehicle was overhauled although engine developed problem due to negligence of the appellant himself and the job cards Ex. R-5 to R-11 prove the same. The mechanic examined by the appellant cannot be said to be expert as he is only 4th class pass and he has not inspected the engine. Gurcharan Singh, Surveyor was examined by the appellant as expert witness but he has not produced any evidence of his education or licence and he admitted that engine could develop problem if the service schedule not followed and the engine oil not changed as per the prescribed schedule. He did not call any mechanic to ascertain defects. Both the expert witnesses of the appellant have not given notice to the respondents and the vehicle was not checked in the presence of the respondents. The respondents have tendered the affidavit of Regional Manager Hardeep Singh Sika, who is a graduate in Mechanical Engineering and is in service for the last 16 years. Vivek Jindal, Partner has also tendered his affidavit and there is no deficiency in service and prayed that the complaint be dismissed.

16. In the written arguments filed on behalf of respondents No. 4, it was submitted that impugned order passed by the District Forum is reasoned order and has been passed after considering the evidence. The answering respondent only got the vehicle financed from H.D.F.C. Bank Ltd. and it has no concern with the vehicle or with any defect in the engine of the vehicle and there is no deficiency in service on the part of respondent No. 3. The answering respondent has got the vehicle financed from H.D.F.C. Bank and has every right to recover the installments of loan from the appellant. If there is any dispute within respondents No. 1 & 2 and the appellant, respondent No. 3 has been wrongly impleaded and prayed that the appeal be dismissed.

17. We have considered the written submissions and heard the counsel for the parties.

18. The impugned order under appeal dated 25.11.2008 passed by the District Forum is cryptic, without any logic and no reasons have been given and the complaint filed by the appellant has been dismissed by simply stating that no defect or manufacturing defect was reported in the disputed

vehicle during the warranty period and the opposite parties(respondents) were not deficient in service.

19. The District Forum has neither discussed the documents filed by the appellant nor by the respondents. Respondents have laid much emphasis in the written submissions on the documents Ex. R-5 to Ex. R-10. These are the job cards for free service from 1st service to 6th free service and thereafter the photos of the load carriage and owner's manual have been exhibited as Ex. R-11 and Ex. R-12, respectively and affidavit of Sh. Vivek Jindal, Partner, Manglam Auto Ltd., Patiala is Ex. R-13 and of Sh. Gurwinder Singh, Collection Manager, HDFC Bank Ltd. is Ex. 'RX'. As per the pleadings before 5.1.2007 no problem in the engine was reported and the vehicle has covered 15669 Km.. On 5.1.2007 when the vehicle has covered 15669 Km. complaint of 'high engine oil consumption' was reported. Ex. R-9 is the job card concerning this and in this job card there was complaint of 'high engine oil consumption' and certain spare parts were changed under the warranty as detailed on the other side of this job card. 6th service was carried out at 21556 Kms. on 27.2.2007 vide Ex. R-10. As per the owner's manual Ex. R-13 service schedule was 1000 Km., 5000 Km., 10000 Km., 15000 Km., 20000 Km., 25000 Km and the 6th service was done when the vehicle has covered 21556 Kms. and the 5th service was done when the vehicle has covered 15669 Km. and both the services were done within the warranty period and within the schedule. Ex. C-2 is the affidavit of Sh. Gurbachan Singh Surveyor, Loss Assessor and Investigator and Ex. C-3 is the inspection report and as per this inspection report the engine of the vehicle was repaired number of times but still engine is defective. The appellant examined Manjit Singh, Mechanic, who checked the vehicle No. PB-11AE-8613 on 14.6.2007 and gave his report dated 14.6.2007 that he checked the three wheeler and due to the very bad condition of the engine, the vehicle did not start and engine is not in working condition.

20. As discussed above, the defects in vehicle were reported well within the warranty period i.e. on 5.1.2007 and the engine was also overhauled but despite overhauling of the engine, the vehicle was not in working condition and even after overhauling it was not in satisfactory condition and as per the report of the Mechanic the vehicle did not start and the engine is not in working condition. The respondents have not led any evidence but as per the respondents, engine of the vehicle was overhauled when there were complaints to that effect and the blame has been put on the appellant for engine developing problems and it was stated that it is due to the negligence of the appellant himself. The respondents No. 1 & 2 have miserably failed to bring on record any material to prove as to how the appellant was negligent in maintaining the vehicle in question except pleading that the service was conducted out of the service schedule. But as discussed above, as per the owner's manual Ex. R-12 relied upon by the respondents, the service schedule was altogether different than the one pleaded by the respondents and the facts and figures mentioned in the pleadings are imaginary and do not find place in the owner's manual Ex. R-12.

21. Admittedly the vehicle in question was purchased by the appellant on 15.8.2006 and the vehicle developed engine problem during the warranty period i.e. on 5.1.2007 and the respondents tried to rectify it but failed to do so and even as per their own version the engine was overhauled but it has not given any satisfactory result. The vehicle in question was financed by Khushbu Auto Finance Limited(HDFC Bank Ltd.). Receipts Ex. C-7 to C-17 prove that the appellant has been paying the

installments to the said financier but after payment of the 8 installments the remaining 28 installments have not been paid by the appellant as per the statement of Sh. Sanjay Bhatnagar Ex. R-2, who had deposed so and has further stated that the said three wheeler was on hire purchase agreement with H.D.F.C. Bank as the Khushbu Auto Finance Limited is channel business partner of H.D.F.C. Bank.

22. In view of the above discussion, it is proved that the respondents No. 1 & 2 were deficient in service. About 5 years have passed since the purchase of the vehicle and at this stage ordering to replace engine/ the defective parts will not serve the purpose or meet the ends of justice but the appellant has suffered harassment, mental tension, financial loss at the hands of respondents No. 1 & 2 and respondents No. 1 & 2 are liable to pay the compensation to the appellant. Accordingly, the appeal filed by the appellant is accepted and the order under appeal of the District Forum is set-aside and respondents No. 1 & 2 are directed to pay Rs. 50,000/- as compensation to the appellant jointly and severally and Rs. 5,000/- as cost of the litigation. Since the vehicle in question was on hire purchase agreement with respondent H.D.F.C. Bank Ltd. and was financed by respondent Khushbu Auto Finance Limited, therefore, this amount be given to the said respondents and adjusted toward the payment of the installments of the vehicle in question. Accordingly, the complaint is allowed.

23. The arguments in this appeal were heard on 12.1.2011 and the orders were reserved. Now the order be communicated to the parties.

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

(Inderjit Kaushik)  
Presiding Member

January 25, 2011.  
as

(Piare Lal Garg)  
Member