

M/S Honda Seil Cars India Ltd. vs Pure Milk Products Pvt. Ltd. on 31 May, 2022

Additional Bench

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH.

M.A. No.401 of 2022
In/and
First Appeal No.395 of 2009

Date of institution : 26.03.2009
Reserved on : 19.05.2022
Date of decision : 31.05.2022

M/s. Honda Seil Cars India Ltd., Plot No.A-1, Sector 40-41,
Surajpur-Kasna Road, Greater Noida Industrial Development
Area, District Gautam Budh Nagar (U.P.).

.....Appellant/Opposite Party No.1

Versus

1. Pure Milk Products Pvt. Ltd., Village Alamgir, Malerkotla
Road, Ludhiana through its Managing Director.

.....Respondent No.1/Complainant

2. M/s Lally Motors Ltd., Dhandari Kalan, G.T. Road,
Ludhiana-141010.
3. M/s Lally Motors Ltd., Paragpur Road, G.T. Road,
Jalandhar.

Respondents No.2 & 3/OPs No.2 & 3.

First Appeal U/s 15 of the Consumer
Protection Act, 1986 against the Order
dated 19.02.2009 passed by the
District Consumer Disputes Redressal
Forum (now Ludhiana), Ludhiana.

Quorum:-

Mr. Harinderpal Singh Mahal, Presiding Judicial Member

Mrs. Kiran Sibal, Member Argued By:-

For the appellant : Sh. Ravi Nayak, Advocate
For respondent No.1 : Sh. Abhinav Gupta, Adv. with
Sh. Yash Yadav, Advocate
For respondents No.2&3 : None

HARINDERPAL SINGH MAHAL, PRESIDING JUDICIAL MEMBER M.A. No.401 of 2022 (For Additional Evidence) This application has been filed by the counsel for respondent No.1 for additional evidence.

2. Reply to this application has not been filed by the appellant.

3. Learned counsel for respondent No.1 has not pressed this application at the time of arguments. The same is hereby dismissed. Main Case

4. This appeal is taken up again for hearing as per directions given by the Hon'ble National Commission in Revision Petition No.4253/2010 & 2176/2012 with observations as under:-

"16. We also make it clear that we have not examined the merits of the case, the inadequately dealt with preliminary issue of maintainability alone is occasioning to remit the matter back to the State Commission. To have the holistic and comprehensive fresh appraisal of the case, the State Commission, if it crosses the hurdle of the preliminary objection of maintainability, shall re-examine the merits of the case as well and inter alia return its clear and categorical findings on whether the car suffered from 'defect' as defined in section 2(1)(f) of the Act 1986 and pass a fresh self-contained reasoned Order holistically dealing with all the relevant issues germane in the matter.

17. As sequel to the above discussion, the matter is remitted back to the State Commission with request to decide the case afresh on merit as per the law.

5. It was further observed by the Hon'ble National Commission in Para No.4 of the order as under:-

"In this matter the preliminary issue for consideration was whether the complainant co. was 'consumer' within the meaning of section 2(1)(d)(i) of the Act 1986 and as such whether it could avail of the additional remedy available to 'consumer' vide section 3 of the Act 1986.

6. Briefly stated the present appeal was preferred by the Appellant/Opposite Party No.1- M/s. Honda Seil Cars India Ltd against the order dated 19.02.2009 of the District Consumer Disputes Redressal Forum (now Commission), Ludhiana (in short "The District Commission"), whereby the complaint filed by the respondent/complainant was allowed against OPs No.1 & 2 only. OPs No.1 & 2 were directed to replace Honda Accord VTI-L(142-BHP) car of the complainant with a brand new one, with fresh warranty or in the alternative, pay price of the same, amounting to Rs.15,13,601/- to the complainant within 45 days of receipt of copy of order. In default of compliance within 45 days, OPs were directed to pay interest @ 9% p.a. on total price of the car from the date of complaint till payment or till the vehicle was replaced or paid its price. For causing inconvenience, discomfort to the complainant, while travelling in defective car, they were ordered to pay compensation of

Rs.50,000/- and litigation costs of Rs.10,000/-.

7. It would be apposite to mention here that hereinafter the parties will be referred to, as have been arrayed before the District Commission.

8. The facts of the case are that complainant-company for its Managing Director, purchased Honda Accord VTI-L(142 BHP) car bearing engine No.K24A4-000029 and chassis No.MAKCM552J3N-000306 vide invoice No.227 dated 10.09.2003 for Rs.15,13,601/-, from Lally Motors-OP No.2. The vehicle was manufactured by OP No.1 and it was purchased by the complainant-company for use of its M.D. because this car was highlighted by the OP as one of the best in top segment cars available in India and it has all the modern facilities with latest automobile technology. The car carries 24 months warranty or 40000 kms. running, whichever is earlier. The car was got serviced on 21.02.2004 from OP No.2 with a mileage of 18569 kms. The grievances of the complainant in the complaint are that on 7th April, 2004, Managing Director of the complainant-company was driving on the said car with the driver on Kartarpur-Beas National Highway at about 5:30 pm, when the car was going on normal speed on the highway suddenly engine of the car lost its motion and the car stopped and blacked out. Such blacking out of the engine could be dangerous to the life of the occupants of the car, the driver of the car with great difficulty bring it to the halt. The complaint was immediately flashed to OP No.2, who deputed technician Sh. Avtar Singh-OP No.3 with the service van, who reached spot at 8:00 pm. Consequence of which the MD of the complainant-company remained strained for 2/3 hours on the highway, the technician of the car failed to understand the fault of the car so the car was brought to the service station of OP No.3 at Jalandhar with the help of service van, reaching there at 2:00 am on 08.04.2004. The sudden breakdown of the car, caused immense sufferings, mental shock and physical discomfort alongwith inconvenience to Sh. C.S. Bajaj M.D. of the complainant-company as he is going to Amritsar where he was to participate in a pre-arranged meeting at 7:00 pm with the office bearers of SGPC, to finalize a business contract. Due to this breakdown he was prevented to participate in that meeting causing business loss over two crores rupees to the complainant-company. On 08.04.2004, Mr. Bajaj was to go to Delhi for business purpose and thereafter to fly to Calcutta in early morning flight at about 9:00 am from Delhi airport to Calcutta. Due to breakdown of the car Mr. Bajaj missed his trip to Delhi to reach Delhi on 09.04.2004 to take flight to Calcutta. After returning from Calcutta, OP No.3 was contacted on 12.04.2004 and it was intimated that "fuel pump regulator assembly" of the car had got detached from original position and due to that engine has lost fuel pressure and supply thereof. They further intimated that further diagnosis would be made by manufacturer OP No.1, to ascertain the reason why the said part got detached from its position. Further, it was intimated by OP No.3 that they have discussed the matter with OP No.1, who had instructed to replace the fuel pump assembly with necessary attachments. They also informed that they finally replaced parts on 19.04.2004 and also taken road tests, but found noise in the third gear shifting and it was hard in functioning. On being apprised of such defects in the vehicle, complainant pressed upon OP to replace defective car with a new one, as it would be unfair on their part to thrust upon a defective product upon the complainant. They refused to accept this plea of the complainant. Consequently, Mr. Bajaj took delivery of the vehicle under protest, expressing his annoyance with the quality and standard of the vehicle on 19.04.2004. In the meantime, vehicle was got inspected from Sh. Hanish Kumar Gupta, approved surveyor and loss assessor, Barnala in the workshop of OP No.3 on 19.04.2004, who had

done technical inspection of the vehicle. Claimed that defect was inherent in the engine, which occurred about six months of the purchase and the car having not run 25000 kms. Even the technician of OP failed to ascertain the cause of the problem and it was not roadworthy. Complainant got it re-checked at the dealership outlet of OP No.2 on 20.04.2004. The car was to be re-delivered after diagnosing the cause of the defect and the car remained with them till 24th April, 2004. Mr. Bajaj contacted OP No.3 on 26.04.2004 and found that the car was still persisting with manufacturing defect, which they failed to rectify. So, he requested them to stop his physical and mental tension as well as harassment and deliver him new sound car in place of defective one. On the contrary, they refused to concede to the request of Mr. Bajaj and formed him to take delivery of the car, which he took under protest on 26.04.2004 at 7:00 pm. Since 7th April, 2004, complainant stands deprived to use the car despite having spent huge amount as the car was not fit for road, so complainant was compelled to buy a new car to carry out their activities. A legal notice was issued on 27.04.2004 but proper reply was not given by the OPs except on 20.05.2004 and 10.06.2004 which were baseless. Again on 24.07.2004, when Mr. Bajaj was travelling the said car and going to Mussoorie from Delhi, the car suddenly stopped and its engine blacked out, when they reached near the village Nanakgarh, at a distance of 8 Kms, after passing Chhutmalpur. That place was isolated and there was no habitation and no telephone link and mobile phone was also not working. Hence, Mr. Bajaj was to spent night on the roadside. On next morning 25.07.2004, with the help of some passerby, contacted the dealership of OP No.2 at Ludhiana and thereafter, one technician of dealership of Karnal, reached at 8:00 pm on 25.07.2004 and in the meantime, Mr. Bajaj had to hire a taxi for coming back to their place. The technician made makeshift and temporary arrangement and brought the car to dealership outlet of OP No.2 at Ludhiana. Complainant again got the car checked through Sh. Hanish Kumar Gupta on 02.08.2004, who reported that the car was not roadworthy and advised not to use the same to avoid inconvenience and mis-happening. Again OP tried to compel the complainant to take delivery of the car, on pretext that there was no defect in the fuel pump assembly, which was earlier replaced. Although Mr. Bajaj insisted upon OP No.2 to replace the car with new one but they forced him to take back delivery of the car on 07.08.2004, which he took under protest. Twice, the same defect occurred within span of just 34000 kms for driving the car. Therefore, another legal notice dated 22.08.2004 was served upon the OP but they illegally avoided their responsibility and liability. In these circumstances, complainant has sought directions against OPs to replace the defective car with a new one or in the alternative, paying the cost of the car and compensation of Rs.4,00,000/- and litigation costs.

9. Notice of the complaint was issued to the OPs, in which OP No.1 manufacturer of the car, took plea that the car was purchased by the complainant for commercial use and purpose and it was being used for business purpose, so complainant is not a consumer under the Consumer Protection Act, 1986. Complaint is time barred, filed after two years from the purchase of the vehicle and there are number of intricate and complicated questions of law are involved in this case, it can only be decided by the Civil Court. They have accused the complainant of suppressing true facts of the case and averred that complainant took the car on 08.04.2004 to Jalandhar dealer, locked the car, took away keys with him and came back on 10th April, 2004. Due to which no work could be started on the car, due to such attitude of the complainant. On inspection, it was found that fuel pump assembly regulator was detached and for customer's satisfaction, fuel pump assembly was replaced. On 13.04.2004, the car was ready for delivery and the complainant took the invoice without signing

any documents and refused to take delivery. He took the delivery of the car on 19.04.2004 after harassing the staff of the dealer. Thereafter, he brought the car to other dealer of Ludhiana, with gear shifting problem. Such problem can only be detected due to mishandling of the car, which was conveyed to the complainant and he was apprised that required part was not in stock and would be replaced only on availability. In the meantime, complainant started threatening the staff to replace the car, on receipt of the part, it was replaced but the complainant was still insisted on replacing the whole car. It was not done because there was no manufacturing defect in the car and repairs were undertaken free of cost. Again on 26.07.2004, complainant brought the car on the complaint of detachment of fuel pump assembly regulator. The complaint of the complainant was addressed with the replacement of the defective parts and the complainant took the delivery of the car and made false remarks on the invoice and re-dated the remarks from 29.07.2004 to 07.08.2004 and left the car with the dealer with malafide intentions, though it was having no defect. The OPs also sent their service engineer on 26.08.2004 to inspect the vehicle and he found that there was no manufacturing defect in the car and it was perfectly roadworthy. Complainant threatened the legal action and insisted for replacement of the car, the car was inspected on 21.02.2004 with mileage of 18569 Kms and ok report was given of all its functions and features. As per warranty, for the first time free check up of the new vehicle, was required to be done when it run 1000 kms and second check up at 5000 kms. But complainant brought the car on 28.11.2003 when it has run 11364 Kms. As per limitation the warranty will not apply in case of any damage results from negligent of periodic maintenance.

10. OPs No.2 & 3 have also repudiated the claim of the complainant in their joint reply. They also disputed the claim of the complainant for replacement of the vehicle due to any manufacturing defect. It is further asserted that the car was purchased on 10.09.2003 and it has done 24138 Kms trouble free mileage when as per allegations had stopped on April, 2004, due to minor defect in the fuel pump assembly. It is found that the car stopped due to the detachment of the fuel pump assembly, although fuel pump assembly could have been repaired but the OPs replaced the fuel pump assembly without charging anything from the complainant. The car was last attended on 29.09.2005, when it has done 74064 kms. Minor defects the running of the car were rectified under warranty without any charges. The complainant was stopped by his own act and conduct for raising any objections because he himself breached periodic maintenance schedule by not getting the services of the car done on due dates. The first service was due on 09.10.2003 and second was due on 09.12.2003, but the complainant failed to get the same done on due date and he got the service done on 28.11.2003 at mileage of 11369 kms and second service was due on 15000 kms, he got done on 18569 kms, in this way, he breached the conditions of the warranty himself. They further claimed that the car was purchased by the complainant for business purpose and there is no deficiency in service on the part of the OPs.

11. Both the parties led their evidence before the District Commission. Complainant tendered into evidence affidavit of Charanjit Singh Bajaj, Managing Director alongwith documents Ex.C-1 to Ex.C-

68. Whereas, to rebut this evidence counsel for OP No.1 tendered the evidence affidavit of Amit Sinha, Assistant Manager (Legal), M/s Honda Siel Cars India Ltd. OPs No.2 & 3 also tendered the evidence affidavit of Mandeep Singh C/o Lally Motors alongwith documents Ex.OP2/1 and

Ex.OP2/2.

12. After hearing the parties, District Commission formulated the following issues:-

- (i) Whether complainant is a consumer and entitled to lodge a consumer complaint?
- (ii) Whether complaint is within period of limitation?
- (iii) Whether complainant breached terms and conditions of the warranty, by not getting the vehicle services regularly as per prescribed schedule, if so, to what effect.
- (iv) Whether there is manufacturing defect in the vehicle?
- (v) If point No. IV proved, whether complainant is entitled for replacement of the defective vehicle with a new one?

13. The primary issue which was dealt by the District Commission while deciding this complaint was whether the complainant was the consumer as far as facts of the present case are concerned. It has dealt this issue in Para No.7 of the complaint observing that the vehicle was no doubt purchased by the company in the name of the company but it was for the use of the Managing Director of the company. It was further observed that neither this vehicle was purchased for further sale or business purpose of the company but it was purchased for the use of its Managing Director to manage its affairs and business as company itself is dealer in Pure Milk Products and affairs of the company are managed through its Managing Director and it cannot be imagined that the vehicle was for commercial purpose. While dealing with the same issue this State Commission while disposing of the appeal filed against the judgment of the District Commission also observed that there was no substance in the arguments of the learned counsel for the appellant. Respondent No.1- Company is a legal entity and is entitled to file the complaint. The car was purchased for the use of its Director and not to be used for hire but for personal use and it was held that respondent No.1-company has not purchased the car for commercial purpose, as such the State Commission dismissed the appeal filed by the appellant.

14. Against that appeal, the Hon'ble National Commission while remanding back the present appeal has observed as stated in above Para No.1 and directions were given to this Commission to first decide the preliminary issue that whether the case of the complainant falls under the definition of consumer.

15. Section 2(1)(d) of the Consumer Protection Act which defines the term 'consumer', which envisages as under:-

"2. Definitions.- In this Act, unless the context otherwise requires,-

(7) "consumer" means any person who--

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purposes;

16. A bare perusal of the wording of the Section 2(1)(d) of the Consumer Protection Act, it can be seen that the emphasis is laid on the purpose for which the goods were purchased though the use to which the goods are actually put would be helpful in deciding the purpose for which they were purchased.

17. Admittedly in the present case the car in question was purchased in the name of the company for the use of its M.D namely Sh. C.S. Bajaj. Although learned counsel for the complainant urged that the Director was using this car for his personal use and it was used for the purpose of the company rarely but this plea taken by the learned counsel for the complainant does not find any consonance with the pleadings of the complainant wherein it is mentioned that on 07.04.2004, Managing Director of the company was travelling on National Highway from Kartarpur-Beas, the car breakdown for the first time and the technician of the company was called for repair. Further in Para No.11, it has been clearly mentioned by the complainant that Sh. C.S. Bajaj, M.D was go to Amritsar on that day to participate in a meeting fixed at 7:00 pm with office bearers of SGPC, to finalize a business contract. But due to the said breakdown of the car, he lost his opportunity and failed to participate in that business meeting and causing business loss of over rupees two crores to the complainant company through the director likely to be awarded on that day. On next date i.e. 08.04.2004, Mr. Bajaj was go to Delhi for his business purpose and thereafter he was schedule to fly to Calcutta in the early morning flight at 9:00 am from Delhi airport to Calcutta. Due to the said breakdown of the car and having to remain involved in its inspection process and getting it rectified, resulted in missing of his trip to Delhi and could reach there only in late midnight early hours on 09.04.2004 so that he could take his flight from Delhi airport as stated above for Calcutta.

18. Further in Para No.23 of the complaint, the complainant has mentioned that on 24.07.2004, when Mr. C.S. Bajaj was travelling in the said car and was going to Mussoorie from Delhi, when it had reached near a place in village Nanakgarh, at a distance of about 8 kms after passing Chhutmalpur towards Dehradun, the car suddenly stopped and its engine blacked out and it was a night time at about 8:00 pm. The place were totally secluded and isolated with wild and forestry plantations all around and no habitation around it. There were no passers-by or traffic on the road

during that night time. There was no arrangement or access to any telephone. Even the mobile phone could not work there due to lack of network facility. There was no possibility for any person to go walking for several kilometers to reach the next habituated place which was about 3 kms from that spot. Under such circumstances, the complainant-Sh. C.S. Bajaj had to spend the entire night on the roadside. In the morning of 25.07.2004 with the help of some passers-by from Biharigarh, he could arrange to give a call to the dealership of the respondents at Ludhiana through Sh. S.K. Sharma, G.M. one technician claiming to have come from the dealership of Karnal, reached there at about 8:00 pm on 25.07.2004.

19. A careful perusal of these two incidents as quoted by the complainant itself in the complaint clearly shows that the Managing Director-Sh. C.S. Bajaj was using the car mainly for his business activity and for promoting his business with aim to generate the profits of the company. The purpose behind such acquisition would be to promote advance the business activities of the company by use of such goods or services. It is also observed by Hon'ble Supreme Court in "Laxmi Engineering Works vs. P.S.G. Industrial Institute", II(1995) CPJ 1, "it is not the value of the goods but the purpose for which the goods are brought or put to use, which is relevant to decide whether the goods were obtained for a commercial purpose or not. The same would be the position, where services are hired or availed by a company. If the business activities of a company cannot be conveniently undertaken without the goods purchased or the services hired or availed by a company, such purchase or hiring/availing as the case may be, would be for a commercial purpose, because the objective behind such purchase of goods or hiring or availing of the services would be to enable the company to earn profits by undertaking and advancing its business activities".

20. From the facts of the complaint mentioned above as well as the law laid down by the Hon'ble Supreme Court it can only safely be construed that the car and other services made available by the company to its Director Mr. Bajaj is primarily for the purpose of the business and used by him mainly for the purpose of the company but incidentally also for their personal purpose. The dominant purpose behind the purchase of the vehicle is to propagate the business of the company and other business activities by the director and being incidentally using the same for his personal use then it can be safely said that such acquisitions was for the commercial purpose.

21. Although term 'commercial purpose' has not been defined in the Consumer Protection Act but it held by Hon'ble Supreme Court in case titled "Laxmi Engineering Works vs. P.S.G. Industrial Institute", II (1995) CPJ 1 (SC). In the absence of a statutory definition, we have to go by its ordinary meaning. 'Commercial' denotes 'pertaining to commerce it means "connected with, or engaged in commerce; mercantile, having profit as the main aim" and the word 'commerce' means "financial transactions, especially buying and selling of merchandise on a large scale".

22. Going by the dictionary meaning, of the expression commercial the car obtained and the services hired or availed by a company can be said to have been obtained or hired or availed for commercial purpose only. If the car is connected with, or related to the business or commerce in which the company is engaged.

23. In view of the discussion mentioned above, we hold that the complainant company does not fall under the definition of 'consumer' as defined under Section 2(1)(d) of the Consumer Protection Act as purchased the said car from OPs for commercial purpose.

24. Although learned counsel for the complainant relied upon the various judgments, which reads as under:-

(i) "C.P. Moosa Vs. Chowgle Industries Ltd. & Anr." in F.A. No.719 of 1994 decided on 31.05.2001 passed by NCDRC.

(ii) "Harsolia Motors Vs. National Insurance Company Limited" in F.As. No.159, 160 and 161 of 2004 decided on 03.12.2004 passed by NCDRC.

(iii) "Hyundai Motor India Ltd. vs. Om Parkash Kidar Nath & Ors" in F.A. No.1408 of 2008 decided on 29.05.2009 passed by PSCDRC (Chandigarh).

(iv) "Tata Engineering and Locomotive Co. Ltd. & Anr. vs. Subhash Ahuja & Anr" in F.A. No.531 of 2008 decided on 29.04.2013 passed by NCDRC.

(v) "Springdale Core Consultants Pvt. Ltd through its Authorized Representative Vs. Pioneer Urban Land And Infrastructure Ltd"

in C.C. No.349 of 2017 decided on 14.07.2020 passed by NCDRC.

On the point that definition of 'commercial' is well explained in these authorities, the facts of the case are totally different from the facts mentioned in the said authorities and also the law laid down by the Hon'ble Supreme Court in the authorities mentioned (supra).

25. While referring the above mentioned authorities, learned counsel for the complainant further asserted that since the car was within the warranty period of 24 months or 40000 Kms and all the repairs were required to be performed by Honda Exclusive Authorized Dealer and as such, the OPs were bound to repair the car within the warranty period. It is an admitted fact that the car warranty was given by the company for 24 months or 40000 kms whichever is earlier and the warranty agreement is Ex.C-8.

26. Clause-5 of the Warranty Conditions deals with "Limitations". It excludes damage resulting from neglect of the periodic maintenance damage from repair or maintenance performed using methods not specified by manufacturing company OP No.1 etc. For making application of warranty under clause "Owner's Responsibility", owner is made entitled for free services:-

Free Services The 1,000 km or one (1) month (whichever is earlier), 5000 km or three (3) months (whichever is earlier) & 10,000 km or six (6) months (whichever is earlier) period maintenance services are performed to ensure that every Honda

vehicle is given careful and first class maintenance which particularly during the running-in period is a requisite for satisfactory and trouble-free performance. It enables your Honda Exclusive Authorized Dealer to check your vehicle during this critical early period and make any necessary adjustments.

Periodic Maintenance Schedule The scheduled maintenance in this manual must be performed to keep your warranty valid. The periodic maintenance schedule is designed to help you receive proper performance, durability and reliability from your vehicle. This manual will serve as your permanent record that the required periodic maintenance services have been performed on your vehicle. Always keep this manual in your glove compartment where it will be readily available to your Honda Exclusive Authorized Dealer.

A bare perusal of this clause of the warranty reveals that the car was to be brought by the owner on certain fixed Kms and if the owner does not maintain the periodic schedule of the warranty it is the violation of warranty conditions and excludes the damage from warranty conditions. Admittedly, the car was brought to the company for the first time when it had already clocked 11364 Kms. It was his first service and next service was done on 21.02.2004 when the car had done 18569 Kms and this record is maintained in the service manual of the vehicle. This schedule of the service itself shows that the warranty conditions were not complied with by the purchaser and if damages caused to the engine of the vehicle to the violation of the periodic period in the warranty and definitely the vehicle does not fall within the ambit of the warranty.

27. Learned counsel for the complainant also asserted that the vehicle was having inherent manufacturing defect. Although the District Commission has given an exhaustive finding on this issue. In para No.10 under heading manufacturing defect as well as Para No.11 under heading whether the defective vehicle to be replaced with a new one. Relying upon the certain reports of Mr. Hanish Kumar Gupta, Surveyor and Loss Assessor and the other observations made by the company engineers made from time to time when the vehicle was brought to the service centre and rendered opinion that the vehicle was having manufacturing defect and need to be replaced with new one. However, this Commission while going through the findings of the District Commission did not agree with the same because the observations made by the engineer as and when the vehicle was brought to the service centre for repair with some small problem or defect. From those observations of the engineers and the surveyor it cannot be concluded that the vehicle was having any inherent manufacturing defect which was beyond any repair. Although while making these observations, District Commission has relied upon the rulings of Hon'ble National Commission titled "Hyundai Motors India Ltd. Vs. Affiliated East West Press" 2008 CTJ-140 and "Honda Siel Cars India Limited Vs. Divyang Jain & Ors", 2009 CTJ-46. But the facts of the present case are quite different from the facts as mentioned in the said rulings of the Hon'ble National Commission. Moreover as and when the vehicle was brought to the service centre which was got repaired permanently and it becomes roadworthy every time and it has also been observed by the engineers of the company that as and when new defect is detected that is because of over mileage and rough handling of the vehicle.

28. Without going through the further details on these issues as discussed above, the complaint does not fall within the ambit of the consumer as defined under Section 2(1)(d) of the Consumer Protection Act, 2019 and other issues require no further discussion.

29. Since as per preliminary issues decided by this Commission, the complaint does not fit within the parameters of the Consumer as per Section 2(1)(d), this appeal is allowed and the order of the District Commission is set aside.

30. The appellant/OP No.1 has deposited a sum of Rs.25,000/- at the time of filing of the appeal with this Commission. This amount, along with interest which has accrued thereon, if any, shall be remitted by the Registry to the appellant/OP No.1 by way of a crossed cheque/demand draft after the expiry of limitation period in accordance with law.

31. The appeal could not be decided within the statutory period due to heavy pendency of work.

(HARINDERPAL SINGH MAHAL) PRESIDING JUDICIAL MEMBER (KIRAN SIBAL) MEMBER
May 31, 2022.

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