SUPREME COURT OF INDIA

Maruti Udyog Limited

Vs

Susheel Kumar Gabgotra and Another

Appeal (Civil) 3734 of 2000

(Arijit Pasayat and Tarun Chatterjee, JJ)

29.03.2006

JUDGMENT

ARIJIT PASAYAT J

Challenge in this appeal is to the judgment rendered by a Division Bench of the J & K High Court at Jammu dismissing the appeal filed by the appellant under Section 17 of the J&K Consumers Protection Act, 1988 (in short the 'Act'). Challenge in the said appeal was to the order dated 9.11.1998 passed by the J&K State Consumer Redressal Commission (in short the 'Commission') on a complaint filed by respondent no.1. In the complaint appellant and respondent no.2 were impleaded as the opposite parties.

The factual background in a nutshell is as follows:

Respondent-complainant filed a compliant before the Commission seeking a direction to the appellant herein to take back the Maruti car back and repay an amount of Rs.1, 97, 460.37 being the cost of the car supplied to him, along with interest at the rate of 18 per cent with effect from 27.11.1996, as the car was defective. He also sought compensation for the loss at his place of work and coaching charges approximately Rs.60, 000/-; Rs.1, 00, 000/- towards mental agony, physical

deterioration and emotional stress, Rs.15, 000/- for his trip to Karnal on the mistaken direction of the appellant and also Rs.2, 500/- towards the costs of litigation and legal consultation.

Respondent No.1 complainant had purchased a Maruti Car on 27.11.1996 from the appellant through its authorized dealer, respondent No.2 herein, on payment of Rs.1, 97, 460.37 as sale price. After delivery of the car, the complainant noticed that the clutch of the car was not functioning properly as it developed unusual noise/jerks on running of the engine. The defect was brought to the notice of respondent No.2, whose engineer after examining the defect told the complainant that the clutch is behaving erratically because of the new engine and it will automatically adjust/become defect- free after covering some mileage. But it did not happen that way and on the other hand problem increased. He again reported to respondent No.2 whereupon he was assured that the defect will disappear after the first service which was done on 19.12.1996. But the defect continued. The complainant again approached respondent No.2 and was told that the engine will have to be brought down to locate the trouble which the engineers failed to pin point. The complainant objected to it as the defect had developed within the warranty period and approached the Head Office (Marketing) of the appellant at Gurgaon. He wrote letter dated 19.2.1997 bringing to the appellant's notice about the inherent manufacturing defect in the car and requested for its replacement. The appellant vide its letter dated 5.3.1997, advised the complainant to take the car to Modern Automobiles, Karnal, for getting the needful done. He took the car to Karnal on 10.3.1997. But the said concern did not test the vehicle on the ground that the same had been delivered by respondent No.2 who was responsible and can repair the vehicle. The complainant came back to Jammu. On 13.3.1997 the appellant conceded to have wrongly advised the complainant to take the car to Karnal and asked him to again approach respondent No.2 at Jammu. On 21.3.1997 Mr. H.S. Chahal, Senior Engineer, Regional Office, Chandigarh, examined the car but the defect could not be removed which continued to give trouble. The matter was again reported to the appellant and the complainant again visited respondent No.2 on 17.4.1997 but had to return with persisting defect. On 21.4.1997 the complainant addressed a letter to the Chairman-cum-Managing Director of the appellant-company about the manufacturing defect in the car sold to him and requested for its replacement. No reply to the said letter was received. The complainant suffered financial loss not only because of the callous and careless attitude of the appellant but also on account of the appellant having sold defective car to the complainant, defects whereof could not be removed thereby leaving him to face emotional stress, mental agony and to drive the defective car posing a risk to his life .With these grievances complainant approached the Commission.

Respondents filed their replies before the Commission stating therein that their obligation under the warranty was only to repair or replace any part found to be defective. The appellant and its authorized dealer (Respondent No.2) have attended to the vehicle during the warranty period free of charges and had carried out necessary repairs and replacement of the components on 21.3.1997 to the satisfaction of the complainant. The vehicle was again inspected on 29.5.1997 and the complainant was advised to leave the vehicle at the workshop of the dealer of the appellant at Jammu for inspection and carrying out necessary repairs to which the complainant did not agree. The correspondence between the parties has not been denied by the appellant and their dealer (Respondent No.2). The appellant has claimed that it is not under any obligation to take back the Maruti car or repay the sale price to the complainant.

The High Court held that the warranty condition relied upon by the appellant did not warrant interpretation that only the defective part was to be replaced and not the car itself. Reference was made to certain observations in the Corpus Juris Secundrum Volume 77 page 1198. It was held that the booklet containing warranty clearly indicates promise of service and replacement with certain conditions. It was observed that the Commission was justified in its conclusion that the appellant had agreed to replace the vehicle and had admitted that there was manufacturing defect in the concerned part. Reliance was also placed on a decision of this Court in Tata Engineering & Locomotive Co. Ltd. v. Gajanan Y. Mandrekar . Therefore, the appellant was directed to replace the car or repay the amount received by it as sale price with interest @ 18% p.a. w.e.f. 27.11.1996 with costs awarded by the Commission.

In support of the appeal, learned counsel for the appellant submitted that both the Commission and the High Court erred in holding that there was an admission to replace the car and/or admission of any manufacturing defect. The warranty condition clearly refers to the replacement of the defective part and not of the car. Observations made in the Corpus Juris Secundrum had been read out of context. It was stated that at the most the Commission and the High Court could have asked for the replacement of the defective part or to pay the cost thereof.

Learned counsel for the respondent no.1 supported the orders of the Commission and the High Court.

The obligation under clause (3) of the Manual reads as under:

"(3) Maruti's Warranty Obligation: If any defect(s) should be found in a Maruti Vehicle within the term stipulated above, Maruti's only obligation is to repair or replace at its sole discretion any part shown to be defective with a new part of the equivalent at no cost to the owner for parts or labour, when Maruti acknowledges that such a defect is attributable to faculty material or workmanship at the time of manufacture. The owner is responsible for any repair or replacement which are not covered by this warranty."

The Commission and the High Court have relied on so called admission of the appellant in para 3 of the objections filed before the Commission. In various documents, more particularly letter dated 19.2.1997 written by respondent no.1 to the appellant, it is clearly stated that appellant had indicated that downing of the engine was necessary to trace the problem. There was no agreement to replace the engine system. Additionally, it is not disputed by learned counsel for the respondent no.1 that when appellant had asked the vehicle to be brought for the aforesaid purpose the respondent no.1 had not done so. To infer that there was any manufacturing defect in the said background is without any foundation.

In Corpus Juris Secundrum the observations to which reference was made by the High Court read as follows:

"On a sale of a motor vehicle by a manufacturer to dealer there may be an implied warranty that it is reasonably fit for, or adapted to, the uses for which it is made and sold; and such a warranty is not excluded by the silence of the contract of sale as to warranties."

The principles stated above can never be doubted. But what is relevant in the case at hand is that the warranty conditions were specially stated. This is not a case of silence of a contract of sale as to warranty. Therefore, the High Court was not justified in directing replacement of the vehicle.

But on the peculiar fact of the case relief to the respondent no.1 has to be moulded. In almost a similar case certain directions were given in Jose Phillip Mampillil v. Premier Automobiles Ltd. (relied on).

In line with what has been stated in the aforesaid case, we direct as follows:-

(1) On respondent no.1 taking the vehicle in question to the authorized service centre of the appellant at Jammu within three weeks, the defective part that is clutches assembly shall be replaced. Respondent no.1 shall not be required to pay any charge for the replacement.

2. In addition, respondent no.1 shall be entitled to receive a consolidated sum of Rs. 50, 000/- (rupees fifty thousand only) from the appellant for cost of travel to Karnal which admittedly was wrongly advised by the appellant, for the inconvenience caused to respondent no.1 on account of the acts of the appellant and the respondent no.2 and the cost of litigation.

The appeal is allowed to the aforesaid extent. There shall be no order as to costs.