

Momna Gauri

v.

Scooter India Ltd. through its Regional Manager & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE C. NAGAPPAN

Civil Appeal No. 8815 Of 2013 (Special Leave Petition (Civil) No. 25770 Of 2012) | 27-09-2013

Leave granted.

1. In this appeal, the appellant has prayed for setting aside order dated 4.4.2012 passed by the National Consumer Disputes Redressal Commission (for short, 'the National Commission') in Revision Petition No. 3642/2009 whereby the directions contained in the order passed by District Consumer Disputes Redressal Forum, Morena (for short, 'the District Forum') in CC No. 119/2007 were substantially modified.

2. The appellant, who is a physically challenged person, purchased a Vikram 750 Delux three wheeler auto from Nawal Auto Sales, Morena (respondent No. 3) by availing loan of Rs.1,95,000/-. She started plying the vehicle for earning her livelihood. When the vehicle was serviced by the dealer, i.e., respondent No. 3, the appellant noticed cracks in the chassis. She brought this to the notice of respondent No. 3 and demanded replacement of the vehicle with new one. However, instead of making available new vehicle, respondent No. 3 got the cracks repaired and returned the vehicle to the appellant. After some time, the chassis of the three wheeler again broke. This time, the dealer neither carried out the repairs nor replaced the vehicle.

3. The appellant served legal notice dated 09.08.2007 upon the respondents and claimed replacement of the vehicle and compensation of Rs.10,000/-.

4. Having failed to evoke any response from the respondents, the appellant filed a complaint under Section 12 of the Consumer Protection Act, 1986 and prayed for issue of a direction to the dealer and the manufacturer to replace the vehicle. In paragraphs 4 and 5 of the complaint, the appellant made the following averments :

"4. That the defendant No. 1, aforesaid vehicle three wheeler Auto Vikram, 750 Delux, the chassis whereof was broken from the company itself, and the above said vehicle is in condemned position and the defendant No. 1 intentionally gave to the plaintiff vehicle with

broken chassis and there are mechanical defects in the vehicle, and when the plaintiff got the above said vehicle driven, then there was difficulty in the operation of the vehicle and when the plaintiff saw, its chassis was broken. The plaintiff purchases the vehicle from defendant No. 1 on 08.05.2007 and on date 10.05.2007 at the time of taking away the vehicle, the chassis was found to be broken. The plaintiff told the defendant No. 1 as to why you have given the vehicle with broken chassis. You give me the new vehicle, but the defendant No. 1 by not giving the new vehicle, by changing to the plaintiff, got the broken chassis welded, and gave this in writing that whatever welding work has been done in the vehicle, in case, there will be any difficulty in that, then its payment shall be made by the company, but by the defendant No. 1, by not giving the vehicle, duly changed, gave the vehicle with broken chassis.

5. That because of the plaintiff being handicapped, for her maintenance had purchased the above vehicle, but after the vehicle of the plaintiff being got welded done, the chassis broke again. The plaintiff again made complaint to the defendant No. 1 with the welded chassis, has again broken, but by the defendant No. 1, by not giving the above said vehicle by changing, again got it welded and the defendant No. 1 told this to the plaintiff that in case you have to take the above vehicle, take, we will not give the second vehicle; became bent upon quarrelling. It was stated by the plaintiff that she has purchased this vehicle from you, has paid the money, you are the dealer of the company, but by the defendant No. 1, by getting the broken chassis welded, gave it against. From the above said date, the above vehicle of the plaintiff is standing at home. The plaintiff is not capable of getting the business done through that vehicle. The rims of the wheels of the Auto of the plaintiff are of poor quality and have mechanical defect. The body is also weak. Defendant No. 1 by playing fraud with the plaintiff has intentionally given the above said vehicle of the broken chassis."

5. Respondent Nos.1 to 3 filed separate written statements to contest the complaint. In their counter, respondent Nos. 1 and 2 claimed that the chassis cracked because of overloading and they were not liable to replace the vehicle. They further averred that with a view to maintain the goodwill, the company had replaced the chassis. An objection was also raised to the maintainability of the complaint by stating that the financier, namely, Shriram Transport Finance Agency had not been impleaded as a party.

6. In support of the complaint, the appellant filed her affidavit. On behalf of respondent Nos.1 and 2, an affidavit of Shri N.K. Dhawan (Deputy Manager) was filed.

7. The District Forum considered the rival pleadings and the documents produced by the parties and held that the vehicle purchased by the appellant had a manufacturing defect and that was the reason why the chassis had broken more than once. The District Forum noticed the plea of respondent Nos.1 and 2 that the cracks had developed in the chassis because of overloading and rejected the same by observing that no tangible evidence was produced to

substantiate this assertion. The objection regarding non-impleadment of Shriram Transport Finance Agency as a party was also rejected by the District Forum on the ground that its presence was not necessary for deciding the complaint. In conclusion, the District Forum allowed the complaint and directed the respondents to make available new vehicle to the appellants, who were directed to deposit the old vehicle. The District Forum further directed the appellants to give intimation to the Finance Company about the change of vehicle.

8. The appeal filed by the respondents was dismissed by the State Commission by recording its agreement with the District Forum on the issue of deficiency in service.

9. The National Commission modified the direction given by the District Forum by relying upon the judgment in *Maruti Udyog Ltd. v. Susheel Kumar Gabgotra*, (2006) 4 SCC 644. The operative portion of the order passed by the National Commission reads as under :

"There is no doubt that the chassis of the brand new three wheeler motor vehicle broke down within a short period. Whether this was due to the alleged over-loading could not be clearly established by the petitioners merely on the strength of the challans of fines under the M.V. Act, produced by them. However, we are inclined to agree with Ms. Kohli that in view of the law on the subject laid down by the Apex Court in a catena of judgments (including that in the case cited by Mrs. Kohli above), replacement of the defective chassis by a new one is the legally available relief to the respondent. We, therefore, direct the petitioners to replace the chassis of the vehicle with a brand new one and provide the requisite fresh warranty therefore. In addition, any repairs that may be necessary to make the vehicle completely road-worthy shall be carried out by the petitioners free of charge to the respondent. These directions shall be complied with within two weeks of the respondent bringing the vehicle in question to the premises of the authorized dealer. In addition, considering the specific facts and circumstances of the case, the petitioner shall pay a sum of Rs.10,000/- to respondent No. 1 towards the cost of the proceeding all through, within four weeks from the date of this order."

10. The plea of respondent Nos. 1 and 2 that chassis of the vehicle had broken down due to overloading was rejected by the National Commission by recording the following observations:

"There is no doubt that the chassis of the brand new three wheeler motor vehicle broke down within a short period. Whether this was due to the alleged over-loading could not be clearly established by the petitioners merely on the strength of the challans of fines under the M.V. Act, produced by them."

11. We have heard learned counsel for the parties. Section 21 of the Act, which relates to the jurisdiction of the National Commission reads as under:

"21. Jurisdiction of the National Commission. Subject to the other provisions of this Act, the National Commission shall have jurisdiction

(a) to entertain -

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

12. The aforesaid provision was interpreted by this Court in *Rubi (Chandra) Dutta v. United India Insurance Company Limited*, 2011(2) R.C.R.(Civil) 591 : 2011(2) Recent Apex Judgments (R.A.J.) 250 : (2011) 11 SCC 269 and it was observed :

"Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

13. In the present case, the National Commission did not find any jurisdictional error or perversity in the finding recorded by the District Forum on the issue of deficiency in service.

The National Commission also did not find any fault with the conclusion recorded by the District Forum that there was manufacturing defect in the vehicle sold to the appellant. Therefore, it must be held that by interfering with the order of the District Forum, the National Commission transgressed the limits of its jurisdiction under Section 21 of the Act.

14. In the result, the appeal is allowed, the impugned order is set aside and those passed by the District Forum and the State Commission are restored. The respondents are directed to implement the order of the District Forum within a period of two months from today.

15. Appeal allowed.