

Heading1
Heading2

Complaint Case No. CC/25/2016

Irom Bimolkumar Singh

Vs.

**Mahindra and Mahindra
Ltd. represented by
Proprietor**

BEFORE:

HON'BLE MR. JUSTICE N. Dijamani Singh PRESIDENT
HON'BLE MR. A.C. Netrajit MEMBER
HON'BLE MRS. R.K. Sumitra Devi MEMBER

For the Complainant:

For the Opp. Party:

Dated : 27 Feb 2018

ORDER

This Case has been filed by the Complainant (above named) under section 12 of the Consumer Protection Act, 1986 and Rules made there under praying for awarding compensation for deficiency in service on the part of the Opposite Party, for alleged non-replacement of the defective engine starter of the Bolero (Jeep) purchased by the Complainant.

Briefly facts of the case inter-alia are that on 15.11.2013 the Complainant purchased a Bolero (Jeep) from one Dealer namely M/S Nilo Motors, Authorised Service Centre, Ashok Leyland Ltd., Mahindra & Mahindra Ltd, Nirmala Hotel Complex, M.G. Avenue, Imphal, Manipur. After eight days of purchase the engine starter of the said vehicle was started developing of non functioning. The Complainant averred that he approached the said Dealer, M/S Nilo Motors for replacement of the said defective part but the Dealer told that the part will be replaced with a new one after contacting the Company. Accordingly, the Complainant awaited for a reasonable time but no proper response could be received and he himself had to make arranged for the engine starter part to keep the Bolero vehicle running for obvious reasons.

The Complainant stated that in the meantime, the said Dealership was changed/ transferred to one M/S Shivz Auto Tech Pvt. Ltd, Ghari Airport Road, Imphal West, Manipur. The Complainant therefore, had to approach the said M/S Shivz Auto Tech Pvt. Ltd. for replacement of the defective part stating the reasons and details of purchase of the said Vehicle however, no response was given by the said M/S Shivz Auto Tech Pvt. Ltd for reason not known to the Complainant and as such the Complainant had no other option but to approach the Manipur State Legal Services Authority, Imphal on 18/03/2015 for Redressal of his grievances and a counseling was fixed on 31/03/2015 to hear the matter.

The Complainant further stated that on 31/03/2015 the official Staff of the newly taken over Dealer M/S Shivz Auto Tech Pvt. Ltd. came in the session of the Counselling and negotiated before the Legal Aid Services Authority wherein, the staff namely Mr. Bobby Singh assured that the company would assist to redress the grievances of the Applicant/ Complainant and accordingly the MSLSA, further directed to approach the said Dealer to do the needful. However, no action was taken for replacement of the said defective part despite of the assurance before the Legal Aid Services Authority, instead they sternly warned and threatened saying that they are not responsible in the matter. Consequently, the Complainant engaged a lawyer and issued a legal notice relating to the matter but they (Opposite Party) refused to receive the notice. And hence, the cause of action of the case arose on 15/11/2013 when the Complainant's alleged purchased of the vehicle's part developed non-functioning and again on 31/03/2015 when the official staff namely Bobby Singh of the said Opposite Party, M/S Shivz Auto Tech Pvt. Ltd. gave the verbal assurance to assist for redressal of the grievances of the Applicant/ Complainant before the Manipur Legal Aid Services Authority and subsequent non-compliance of the verbal assurance committed by the staff of the Opposite Party and as such the same is still continuing within the jurisdiction of this District Forum.

The Complainant has filed the following documents in support of his case.

**True copy of Manual Repair Order Form issued by the
M/S Nilo Motors dated 27/11/2013 as Annexure A/1 along with a
certified copy of the order passed by the Legal Aid Clinic, Cheirap
Court Complex dated 31/03/2015 as Annexure A/2.**

This Complaint Petition was admitted on 27/09/2016 by this District Forum and issued notice/ summon to the Opposite Party the newly taken over Dealership, through the staff of the Court but, the Opposite Party refused to receive the notice/ summon with the words that the Complainant can do anything against him (Opposite Party). These words submitted in written by the Process Server Shri L. Chakrabarti Singh and thereafter we directed the Complainant to send the notice/ summon issued by the District Forum again by Registered post and the same had delivered to the Opposite Party as shown in the extract delivery report of the post office submitted by the Counsel to prove the acknowledgement. However, the said Opposite Party failed to turn up and contest the case. Basing on the submission of the extract delivery and tracking report of the Registered post filed in the case, this District Forum (Court) have considered to proceed Ex-parte against the Opposite Party on 20/04/2017 for failing to appear in spite of serving notice/ summon.

We have heard the Conducting Counsel appearing for the Complainant in length and also perused the written argument filed by him. The conducting Counsel has submitted that, one can imagine or imbibe the notion that the volume or the amount of depression of a costly vehicle which was found to be defective in the engine starter within a few days from the date of purchase. Needlessly, the humble

Complainant felt that the important part of the newly purchased vehicle got defective and developed non-functional of the said engine starter without which no vehicle could be moved or used.

The Complainant further submitted that he had made several requests to the Opposite Party for replacement of the defective engine starter of the said Bolero (Jeep) but no a single response was given by the Opposite Party.

Hence, the Complainant filed this case before this District Forum with the following prayer;

- i. To deliver a properly functioning engine starter to the Complainant as early as possible,
- ii. To pay a sum of Rs. 4,00,000/-(rupees four lakhs) only towards the physical strain, mental agony and
- iii. To pay a sum of Rs. 10,000/-(rupees ten thousand) as cost of litigation etc.

It is also alleged and contended that non response of the claimed of the Complainant, the Opposite Party has committed deficiency in service on their part, and as such the Complainant suffered physical strain, mental agony and hazards. The conducting Counsel of the Complainant has submitted the following case in support of the claim;

“CHADIGARH CONSUMER DISPUTES REDRESSAL COMMISSION (1999) 2 CPC 220(1999) 3 CPJ 124, in complaint Case No. 26 of 1998 decided on 16/04/1999 (VIRINDER SHARMA vs MANAGING DIRECTOR MARUTI UDYOG LIMITED and others).”

Whereas, this decided case is quite different from the fact of the instant case as because the Complainant has not produced the requisite documents of the said purchase transaction and also cannot prove the ownership of the alleged purchase of Bolero (Jeep) and therefore, without the relevant proof of facts, the cited case law cannot be applied random.

The first and foremost point to be considered in this case is that the Complainant has failed to produce the relevant documents for purchasing the vehicle. If the Complainant actually purchased the vehicle from the Dealer, the following documents are supposed to be available in his custody or possession.

a) Sale invoice from the Dealer M/S Nilo Motors, Authorised Service Centre, Ashok Leyland Ltd., Mahindra & Mahindra Ltd, Nirmala Hotel Complex, M.G. Avenue, Imphal, Manipur ,

b) Sale deed of the purchased vehicle,

c) The registration book (RC) of the purchased vehicle and the other related documents for the sale transaction between the Dealer and the purchaser (Complainant).

Not a single document connected with the sale/ purchase transaction has been produced to prove the purchase of the said Bolero (Jeep) except a Photostate copy of Manual Repair Order Form mentioning only the date 27/11/2013 in the case.

Now coming to the facts of the case that, the Complainant's claim has not pleaded minute details of the vehicle in question and also that the name of the Opposite Party the newly taken over Dealership, **M/S Shivz Auto Tech Pvt. Ltd, Ghari Airport Road, Imphal West, Manipur** impleaded in the case connected with the said alleged former Dealer, **M/S Nilo Motors, Authorised Service Centre, Ashok Leyland Ltd. Mahindra & Mahindra Ltd, Nirmala Hotel Complex, M.G. Avenue, Imphal, Manipur,** in which the Complainant to have purchased the said Bolero (Jeep).

As per the averments made in the complaint, the former Dealer (Dealership) had been transferred to the later but no relevant document could be produced by the Complainant to prove that the earlier/ former Dealer had been converted to the present impleaded Dealer Opposite Party in other words newly taken over Dealership and therefore, the Complainant has not accrued any right to claim against the Opposite Party for replacement of his alleged defective part. Secondly, the Complainant has also not produced the relevant purchase documents of the vehicle to prove that the vehicle in question was dully purchased by him from the said so called former/ pervious Dealer and subsequent connections with the Opposite Party relating to his claim and therefore, no case is made out by the Complainant.

Accordingly, we hold that the Complainant has failed to adduce sufficient prove of evidence to substantiate his case against the Opposite Party in terms of the dubious transaction for the alleged purchase of the vehicle as stated in the complaint. Without producing the relevant documents of the vehicle in question, how and why the Complainant made such a claim against the Opposite Party and as such this case is treated as frivolous or vexatious in nature.

In the light of the facts and circumstances discussed above, no prima-facie case of deficiency in service is made out against the Opposite Party. Nor has the Complainant been able to establish any of the ingredients highlighted above relating to the purchase of the said Bolero (Jeep) vehicle from the Opposite Party

or the former Dealer as alleged in the pleading. That being so, the Complaint Case is not maintainable due to lack of evidence and therefore, dismissed. No order as to cost.

Pronounced in the Open Court.

[HON'BLE MR. JUSTICE N. Dijamani Singh]
PRESIDENT

[HON'BLE MR. A.C. Netrajit]
MEMBER

[HON'BLE MRS. R.K. Sumitra Devi]
MEMBER