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STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW.

APPEAL NO.1426 OF 2009

(Against the judgment/order dated 29.7.2009 in Complaint
Case No.380/07 of the District Consumer Forum, Gautambudh Nagar)

Managing Director, Honda Siel Cars India Ltd.
& others

...Appellants

Versus

Dr. Indra Pati Singh & others

....Respondents

BEFORE:-

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT

HON'BLE MR. RAMPAL SINGH, MEMBER.

HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER.

For the Appellants : Mr. Vishal Kumar, Advocate.

For the Respondents : Dr. Indra Pati Singh, in person.

Dated : 16.4.2010

JUDGMENT

PER HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER.

This appeal has been filed against the judgment and order dated 27.7.2009 passed by the District Consumer Forum, Gautambudh Nagar in complaint No.80/2007 directing the opposite-parties to replace the car of the complainant with the same model and provide it to the complainant within two months of the order. The opposite-parties were further directed that in case the complainant wanted to purchase any car of higher model then the opposite-parties should provide the same after accepting the difference of the cost. Further, the opposite-parties were directed to pay Rs.40,000.00 as additional damages and Rs.3,000.00 as litigation expenses within two months.

The appellants have challenged the said judgment of the District Consumer Forum mainly on the ground that the respondent No.1/ complainant by not taking delivery of vehicle after repair, has filed the present complaint so that the appellants/opposite-parties succumbed to his illegal and illegitimate demand for replacement of car when no manufacturing defects existed in the vehicle. The Forum below, as submitted further, has failed to appreciate that there was no deficiency in

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service on the part of the appellants. The vehicle was repaired under warranty free of cost by replacement of necessary parts. The Forum below failed to appreciate that the car had not, by them, travelled more than 4074 Kms and also that the respondent No.1/complainant deliberately did not take the delivery of the vehicle after repairs and the same was lying at the work-shop of the respondent No.2. The car is two years old and does not suffer from any manufacturing defect. According to the complainant, the engine of the Civic car U.P.16 N-0021 he had purchased on 25.9.2006 from CSD Canteen was continuously having leakage of the engine oil. On 5.9.2007 the car in question suddenly stopped on Delhi Raj Marg after it had a few jerks. Its engine stopped functioning. Some-how the complainant toed the car to his house where from it was carried away by the staff of the Prime Honda Capital Cars Pvt. Ltd., Ansal Plaza, Main link Road, Vaishali, Ghaziabad. Six days after, the complainant, when he visited the garage on 11.9.2007 noticed that the engine of the car had been totally dismantled which by itself was indicative of the proof that the engine had a manufacturing defect. The garage authorities offered to replace the engine but it was not acceptable to the complainant who insisted for replacement of the car. The appellants/opposite-parties controverted the complainant's version that the case or its engine had any kind of manufacturing defect. The offer for replacement of the engine was conveyed as a goodwill gesture but the complainant turned it down contemplating to mount pressure for replacement of the entire vehicle.

The District Consumer Forum, Gautambudh Nagar having scrutinized all the relevant facts and circumstances, arrived at a conclusion that the car had a manufacturing defect and since the manufacturing Company had withdrawn from global market lacs of vehicles, the complainant also deserved replacement of his defective car. According to the appellants, the Forum below erred in appointing Mr. M.S. Bisht as expert for inspection of the vehicle and wrongly relying upon his collusive and one sided report. Mr. Bisht did not have the requisite expertise of the qualification to inspect the Honda cars that are manufactured with the latest technology and required sophisticated tools

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and equipments to conduct/carry out inspection. The same was apparent from the letter head of Mr. Bisht's report which shows that he is simply a mechanical engineer and does not have any expertise in automobile engineering. He is a surveyor and loss assessor. A bare perusal of his report dated 20.9.2008 shows that it is a layman's report and not that of an expert. No specific details of alleged manufacturing defects have been given at all. He has not even driven the vehicle so as to come to the conclusion regarding any problem or defect in the vehicle. The findings of the Forum below are erroneous, baseless and unsubstantiated as the news-item of Global Recall or withdrawl of Honda Civic vehicles pertains to the vehicles manufactured in U.S. The vehicles manufactured in India do not suffer from the said problem as models manufactured in different countries did. That problem was specific and not general in nature. Accordingly, clarification was also published in the newspaper. The relief granted by the Forum below is even beyond the relief claimed by the complainant in as much as it has gone to the extent of permitting the complainant to purchase another vehicle of higher model. This shows the intention of the respondent No.1/complainant to purchase another vehicle by falsely alleging manufacturing defect in the vehicle in question. The respondent No.4/opposite-party No.6 is the duly authorised service station and dealer of Honda Siel Cars India Ltd. who carried out the necessary repairs during the third service of the subject car i.e. the engine oil, filter and washer-drains were replaced as a part of routine maintenance. Further, when the report of the oil leakage was brought to the notice of the proforma respondent No.4/opposite-party No.6, it carried out the detailed investigation, as a result of which it was found that the S.P. Rocket, Comb Chain, Bolt wash and AB 03 Key 4x5x21 were replaced free of cost as the vehicle was under warranty.

On perusal of the file it is noticed that on 9.9.2009, this appeal was heard in the presence of learned counsel for the appellants and the respondent no.1/complainant Dr. Indra Pati Singh in person and also the learned counsel for the respondent No.2 and 3. The learned counsel for the appellants contended that Honda Civic car of the respondent/complainant is in functional order and the same is parked in

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garage of the Prime Honda Capital Cars Pvt. Ltd., Vaishali, Ghaziabad and that the necessary repairs have been carried out and the vehicle is roadworthy in all respects. The defects in the engine as pointed out by the complainant to the appellants manufacturing Company have been removed but since the engine has been totally dismantled and even its number changed, the complainant is not willing to take it back. The car is lying in the garage for the last two years and as pleaded by the complainant it has caused mental agony to him. A reference has also been made by the learned counsel for the appellants to the automobile engineer's report who has simply stated about the car being roadworthy. The complainant's expert's opinion submitted by Sri M.S. Bisht who is a mechanical engineer as already said above has been criticised by the appellants' counsel because of his being not an automobile engineer. The learned counsel for the appellants had referred to an Hon'ble Supreme Court's decision in 'Maruti Udyog Ltd. Vs. Susheel Kumar Gabgotra and Anr.' in Civil Appeal No.3734 of 2000 and contended with reference to the principle of law laid down therein that warranty implies simply replacement of the defective parts and not the car as a whole. A perusal of this decision reveals that the car did not have any defect in the engine rather clutch of the car had gone defective and there were some unusual noise and jerks. The complainant's case is that the engine of the car in question before us still gets heated when put on operation. Therefore, having regard to the above mentioned facts and circumstances, this State Commission has to examine whether the engine needs to be changed or not. Since the other parts of the car including its body are in perfect condition, we do not find it appropriate to ask for replacement of the car.

On 26.2.2010 when this appeal came up for hearing Mr. Vishal Kumar, learned counsel appearing for the appellants had as a goodwill gesture offered to replace the entire engine bearing chasis and engine number of 2010 with two years further warranty. It was clarified for removal of any doubt that the entire engine means the whole engine comprising all parts thereof. The price of the new engine, as conveyed to us by Mr. Vishal Kumar was Rs.3,27,559.00. The respondent No.1 Dr. Indra Pati Singh who was present in person prayed for two weeks time





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and no more to convey his willingness. Dr. Indra Pati Singh was also permitted to examine the car lying in the garage of the appellants' dealer at Ghaziabad. Both Dr. Indra Pati Singh and Mr. Vishal Kumar were directed to appear before us on 19.3.2010.

On 19.3.2010 both Dr. Indra Pati Singh and learned counsel for the appellants Mr. Vishal Kumar were present and respondent No.1 Dr. Indra Pati Singh stated that the offer of Mr Vishal Kumar for replacement of engine as submitted on 26.2.2010 was not acceptable to him. In this situation Mr. Vishal Kumar withdrew his offer in presence of Dr. Indra Pati Singh. Thereafter, we heard Mr. Vishal Kumar on merit of this appeal and also Dr. Indra Pati Singh who concluded their arguments. Whereas, the appellants' contention is that replacement of engine is not obligatory for them as it has been thoroughly repaired leaving no defect therein, the complainant has vehemently submitted that since the engine still gets heated, he desires replacement of the whole car.

We have perused the memorandum of appeal and the written and recorded submissions of both the parties which have been summarised earlier. There is no doubt that the Honda car in question had frequently developed some defects or the other which were promptly rectified by the appellants. The appellants submitted the expert report of Mr. Harish Juneja while the complainant/respondent No.1 furnished the report of Sri M.S. Bisht. The report of Sri Bisht was rejected by the appellants on the ground that he was simply a mechanical engineer and as such he was not competent to submit his expert opinion regarding automobiles. Similarly, the expert opinion submitted by the appellants of Sri Harish Juneja was rejected by the complainant on the ground that Sri Juneja had the same qualification as Sri Bisht. Further, that he has not opined on why the engine was overhauled and changes were done with the engine of the car having been totally dismantled. The complainant/ respondent No.1 has not specifically contradicted the various grounds raised by the appellants against the impugned judgment and order nor he has submitted any cogent reasons, documents or citations to support his cause for replacement of the vehicle.

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Before we enter into the discussions for replace of the vehicle as a whole or the defective engine thereof, we may like to observe that the decision of the Honda manufacturing Company recalling 1.8 lacs faulty civic cars from its global market, as pointed out by Dr. Indra Pati Singh, with reference to a news item published in "Economic Times" dated 17th September, 2007 (page 22) may not provide a sound basis for replacement of the respondent/complainant's car as the recall order of the manufacturing Company pertains to general defect in the wheel bearing seal in the faulty cars that had a leakage problem resulting in mal functioning of the brakes. Here before us, the wheel bearing problem has neither been quoted nor proved, therefore, the news item is not an appropriate simile to order for replacement of the car of the complainant, who admitted in his letter addressed to the Manager, Prime Honda Capital Cars Pvt. Ltd., Ansal Plaza, Main link Road, Vaishali, Ghaziabad in September, 2007 that the car is new, has never met with an accident and has no scratch over its entire body. No doubt two and half years since then have gone but the car is neither in use nor suffered any set-back during this period. Despite the ego of the complainant having been hurt, replacement of the whole car might not be justified. It may be true that Dr. Indra Pati Singh, who was already impressed with the performance of a Honda car, he is already possessed of, was badly disturbed because of a serious snag in the engine resulting in sudden stoppage of his civic car in question on the road with the risk of accident from the vehicular traffic, but it was not enough for replacement of the car as a whole as he himself has not pointed out any other defect elsewhere. Its body with the original colour is in perfect condition as is also evident from the photo of the car on record. Mr. M.S. Bisht, whose expert opinion, the complainant has relied upon also submits in his report that only the engine of the vehicle seems to have a manufacturing defect. The concluding part of his report may be quoted as below:-

"Opening of the engine after running only 4713 Kilometers shows that some manufacturing defect is there in this car and the resale value of the vehicle is very much affected after opening of the engine so this car can be changed, with a new car in my opinion."

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The above report clearly stipulates that the car of the complainant had no other defect except that of the engine. The report annexure '4' of Mr. M.S. Bisht does not indicate any other defect whatsoever. Therefore, in our considered opinion replacement of the new engine seems to be the most appropriate order, we can mandate for compliance by the manufacturing Company. Here we would hasten to add that a defect in the engine which had barely run for a few thousands of Kilometers as mentioned above is indicative of the fact that the engine had a serious malady/manufacturing defect and though it is not proved with convincing proof that the number of the engine had been changed but since the whole engine has been dismantled and many parts replaced, it can be observed that a sealed engine with its entire assembly needs to be replaced so as to satisfy the complainant, who was not only not contented with the performance of the vehicle despite that he had spent about Rs.12 lacs but was also in distress since none of the authorities of the Honda Company, either at the district, regional or headquarter level heard his grievance for providing redressal. The correspondence on record though not very relevant to be quoted clearly proves that the badly hurt Dr. Indra Pati Singh made an endeavour to contact all the authorities including Managing Director of the Company but he had no satisfactory response and it appears, therefore, that he got further hurt and in our considered opinion if a consumer having spent Rs.12 lacs is not satisfied with the performance of his vehicle he is fully justified in raising his agitated voice for redressal of his grievance and if there is none to hear him and further he meets with high handedness of the garage authorities, it would be quite natural for him to be disturbed, demoralized and emotionally hurt. We have seen him arguing with an agitated temperament and as he always appeared before this Commission alongwith his spouse, who too, joined him every time to air their disturbed feelings, we can appreciate the mental status of their mind though they had another Honda car in their house which as they said have been riding in for the last many-many years. In other words, as may be observed further, the couple was enamoured of the Honda car and since they liked the car most with its manufacturing grandeur, goodwill and status symbol, they were certainly bound to be hurt with

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the development of events that had taken place in the purchase and performance of the civic car in question. Certainly they deserve ^{To be} compensated with the award of damages on account of their having been mentally disturbed. We would come latter to this aspect of the matter but here it is enough to mention that even according to the appellants' expert Mr. Harish Juneja, who has not contradicted the overhauling of the engine, ^{the engine needed replacement of various parts} and why overhauling was needed at a pre-mature stage has not been disclosed with detailed reasons. Mr. Juneja in his report dated 20.6.2009 refers to his examination of the engine with AC and without AC. According to him it never heated during the test operation. He also says that he checked the compression ratio of all cylinders by the compression gauge. The compression ratio was as per the Honda norms. Mr. Juneja in his report has not disclosed the details about various parts of the engine having been replaced. Also, he was miser in not coming out with full disclosures as to what was the real defect in the engine and why the car amidst traffic on road abruptly stopped. The complainant when visited the garage where his car was lying under repairs he was shocked to see the engine lying away from the body of the car with all parts disassembled. Normally, an engine of a Honda civic car or any other car requires overhauling after it had run about 1 lac Kms. It was, therefore, the bounden duty of Mr. Juneja who was an automobile engineer to disclose every minute details of the defect in the engine and its dismantled parts. Screening of the relevant details would certainly pointout to the conclusion that the engine certainly suffered with a manufacturing malady and this necessitated its replacement with a sealed new assembly of the engine.

As we have observed above, the vehicle in question had no other defect with its body having not a single scratch, as admitted to the complainant, ^{we} we do not find it justifiable to order for replacement of the entire vehicle. Insofar as the complainant came across the mental and physical inconvenience we can observe that all this can be compensated with an award of compensation of Rs.40,000.00 (Rupees forty thousands) as granted by the District Consumer Forum.

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The order of the Hon'ble National Consumer Disputes Redressal Commission dated 20.12.2007 in 'Maruti Udyog Ltd. Vs. Narender Kumar Verma and Anr.' II(2008)(CPJ 22 (NC) appears to be relevant to the present case before us in which the judgment of the Hon'ble Supreme Court in 'Maruti Udyog Ltd. Vs. Susheel Kumar Gabgotra and Anr.' MANU/SC/1519/2006 has been quoted as under:-

"Firstly, the warranty clause quoted by the learned Senior counsel is relevant to the case. Maruti's warranty is limited to replacement of certain parts which are found to be defective with a new part or equivalent at no cost to the owner, if such defect is attributable to faulty material or workmanship at the time of manufacture. In this case the petitioners have replaced the parts found to be defective."

In the said case Hon'ble Supreme Court had issued following directions:-

- (1) On respondent 1 taking the vehicle in question to the authorised service centre of the appellant at Jammu within three weeks, the defective part, that is, clutch assembly shall be replaced. Respondent 1 shall not be required to pay any charge of the replacement.
- (2) In addition, respondent 1 shall be entitled to receive a consolidated sum of Rs.50,000.00 (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 respondent 2 and the cost of litigation.

In yet another judgment of the Hon'ble National Commission 'R. Baskar Vs. D.N. Udani and Ors.' IV(2006)CPJ 257 (NC) in which it was contended by the manufacturing Company that if the vehicle was having manufacturing defects it could not have been used for one year and 5 months and run more than 9500 Kms. All the job cards produced before the Consumer Fora would show that all the routine maintenance warranty service were provided to the vehicle. Further, this Commission

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has consistently held that whenever any replacement or refund is sought of the product, the complainant should prove or establish the manufacturing defects. Lastly, he submitted that vehicle was repaired and kept ready for delivery and the complainant was repeatedly called to take the delivery of the vehicle but he deliberately refused to take delivery only with ulterior motive to get the total refund of the price of the vehicle without even testing or riding the vehicle and on the basis of said facts the Hon'ble National Commission arrived at a conclusion that the vehicle had been in use for one year and five months and run over 9808 Kms, therefore, it is difficult to believe that it is suffering from manufacturing defects. Further, the vehicle was repaired by the opposite-parties and kept ready for delivery still the complainant refused to test ride the vehicle. As refusal to take delivery leads us to the conclusion that the complainant is only interested in refund of the amount. This Commission in 'EID Parry (India) Ltd. Vs. Baby Benjamin Thushara' I(1992)CPJ 279 (NC) has held that In a complaint when it is alleged that the article in question suffers from manufacturing defect, it is necessary to send the said article for laboratory examination and in 'Mahindra and Mahindra Ltd. Vs. B.G. Thakurdesai and Anr.' II (1993) CPJ 225 (NC), it is held that if a consumer purchases some machinery and some part of it is found to have manufacturing defect and that part can be replaced then it will be prejudicial to the interest of the manufacturer if he is asked to replace the whole machinery without sufficient cause.

The Hon'ble Supreme Court of India in Civil Appeal No.3734 of 2000 'Maruti Udyog Ltd. Vs. Susheel Kumar Gabgotra and Anr.', has held that the warranty condition referred only to the replacement of the defective part and not of the car. There was no agreement to replace the engine system. The Hight Court as well as the Commission were not justified in directing the replacement of the car. Having regard to the facts of the case and the hardship undergone by the complainant, the appellants were directed to remove all the defects in the car and to pay a consolidated sum as compensation.

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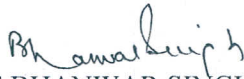


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In view of the above judgments and the discussions held earlier, we direct the appellants to replace the entire engine, bearing chasis and engine number of 2010 with two years further warranty, the estimated cost of which, as conveyed by the learned counsel for the appellants on 26.2.2010 is Rs.3,27,559.00. We clarify for removal of any doubt that the entire engine means the whole engine comprising all parts thereof, as already quoted above.

In the result, the appeal is dismissed with costs (quantified as RS.7,500.00) with compensation of Rs.40,000.00 to be paid by the appellants to the respondent No.1/complainant.

The impugned judgment stands modified in terms of above.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


(RAMPAL SINGH)
MEMBER

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