

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW
APPEAL NO. 1231/2005

(against the judgment and order dated 28.06.2005 in Complaint case no. 75/2004 passed by the District Consumer Forum, Barabanki)

Amar Pratap Singh s/o Sri Ram Lakhan Singh
Prop. Mahima Motors, Bhitaria
r/o Bhitaria, Pargana and Tehsil Ram Sanehi Ghat
Barabanki and another

Appellants

Versus

Chandra Kumar Singh son of Vijai Bahadur Singh
r/o village Pandey ka purwa, Majare- Hasaur
Tehsil Ram Sanehi Ghat, Barabanki

Respondent

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER
HON'BLE MR. RAM PAL SINGH, MEMBER

For the Appellants : Dr. Udai Veer Singh, Advocate
For the respondent : Sri O.P. Duvel, Advocate

DATED: 14.12.2010.

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard Dr. Udai Veer Singh, learned counsel for the appellants and Sri O.P. Duvel, learned counsel for the respondent and perused the record.

The present appeal has been filed by M/s Mahima Motors, through their partners Sri Amar Pratap Singh and Sri Virendra Pratap Singh who had sold Mahindra Tractor D.I. Model to the complainant on 22.07.2003. As pleaded by the complainant in his complaint the engine of the tractor failed and stopped functioning. The tyres of the tractor were also stated to be old but ~~ret~~^{re}readed. The complainant carried ~~ent~~^l his tractor to the garage of the appellants on 15.01.2004. The appellants asked the complainant to pay for the repairs to be carried out but the latter refused







as the tractor was within the warranty period. The complainant then filed his complaint on 20.03.2004 which was contested by the appellants on the ground that they were not liable for rendering free service or replacement of the engine parts. It was also pleaded by them that generally engine of tractor develops snags if it is not sent to the garage for routine servicing in time.

The District Consumer Forum examined the pleadings and evidence of the parties and recorded a finding that the engine of the tractor having gone out of order during the warranty period, the appellants were liable to replace the engine and tyres both. Accordingly, a direction was issued to both of them to remove the defects and replace the engine and tyres.

Feeling aggrieved of the said judgment the appellants have preferred the present appeal. It is noteworthy that some additional grounds were also filed during the pendency of this appeal and an additional plea was taken that the tractor of the complainant met with an accident on 02.01.2004 i.e. long before the complaint was filed on 20.03.2004 but the complainant concealed this fact and misled the Forum below. In other words the appellants have now stated that the engine if developed some defects, it might be the result of the accident. On the other hand Sri O.P. Duvel challenged the veracity of the factum of accident and argued that it might be a mischief of the appellants who could have manufactured the papers relating to accident. However, the appellants have filed two important documents in order to prove the plea of accident – the first of them being a copy of the FIR lodged with the police on Jan. 02, 2004. This report reads as follows :-

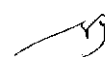
थानाध्यक्ष,
टिकैतनगर बाराबंकी

विषय: इंजन नं० NGH-23186 के दुर्घटनाग्रस्त हो जाने के कारण के सम्बन्ध में सूचनार्थ।

महोदय,

निवेदन है कि प्रार्थी अपना ट्रैक्टर सर्विसिंग के लिये भिटिरया लिये जा रहा था अचानक जानवर आगे आ जाने के कारण रोकने के प्रयास में ट्रैक्टर हासौर के

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पास पलट गया जिससे ट्रैक्टर क्षतिग्रस्त हो गया। तथा जान माल को कोई खतरा नहीं हुआ।

अतः निवेदन है कि उपरोक्त ट्रैक्टर के क्षतिग्रस्त की सूचना दर्ज करने की कृपा करे।

प्रार्थी

चन्द्र कुमार सिंह S/o
श्री विजय बहादुर सिंह
ग्राम हासौर, पांडेपुरवा
थाना- टिकैतनगर
जिला- बाराबंकी
2/1/04

The other document is the repudiation letter of the National Insurance Corporation whereby the claim of the complainant for insurance money was repudiated by the insurance company. In this repudiation letter also the date of accident has been referred to as 02.01.2004. There are two repercussions of this accident theory. One is that the fact of accident was concealed by the complainant which by itself is a serious matter as a person who comes to a court or forum for some help is expected to come with clean hands and if he does not do so then he forfeits his right to be rescued. The other aspect of the matter is that the defects pointed out by the complainant in the engine of the tractor might be connected to the accident or say the defect could have occurred on account of the accident of the tractor. As recited in the report submitted by the police an animal had appeared all of a sudden in front of the tractor and when the driver tried to save the animal the tractor turned tortile. Be that as it may both the aspects are enough to demolish the claim of the complainant that the tractor had a manufacturing defect in its engine.

Sri O.P. Duvel has contended that the theory of accident seems to have been manufactured by the appellants with a view to demolish the claim of the complainant by unnecessarily dragging him to the alleged theory of concealment. Also it has been argued by Sri O.P. Duvel that the appellants manipulated this complaint to the police and also preferred the insurance claim with the National Insurance Company for

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their own gain and without the complainant's knowledge. Had it been so the theory of accident must have figured in the appellants' written statement filed by them before the District Consumer Forum but they did not propound that theory and there was a valid reason for this. They have filed the additional ground in the instant appeal on 24/9/2005 with the averment that they came to know about the accident only when they received the repudiation letter dated 05.07.2005/11.07.2005 of the National Insurance Company Limited, a copy whereof is paper no. 6 enclosed with the additional grounds. A perusal of the additional grounds would reveal that the appellants were not aware of the accident until they received the repudiation letter from the State Bank of India, Ram Sanahi Ghat Branch, Barabanki i.e. the bankers who had financed the purchase of the complainant's tractor. Not only this but they could have, if they knew about the accident resulting out of their own mischief, mentioned it in the memorandum of appeal filed on 25.07.2005 but non recital about the fact of accident in their written statement filed before the District Consumer Forum and the in the memorandum of appeal filed before this Commission would certainly ^{lead to} ~~bound~~ to the conclusion that the appellants were not instrumental in getting the FIR lodged with the police. Also we do not find it logical for the two appellants to have indulged in such a conspiracy and cheat the complainant out of their own manipulation. We are therefore, not inclined to accept the complainant's version as submitted by Sri O.P. Duvel that the accident theory was the result of the mischief or conspiracy of the two appellants.

Resultantly, we find that the complainant's tractor met with an accident on 02.01.2004 and this fact was concealed by the complainant ^{to} while he preferred his complaint. Besides that concealment was set up ^{against} ~~to~~ his claim, possibility of the tractor having suffered a serious damage in the accident cannot be ruled out. Moreover, the manufacturing defect in the engine could be proved by an automobile engineer's report but the complainant has not relied upon any such expert's report. The contention that the tractor is lying in the garage of the appellant from Jan 15, 2004 may not absolve the complainant of his obligation of onus to prove the defect. It has been submitted by Dr. Udai Veer Singh that the

complainant had been communicated soon after he brought the tractor to the garage that he had to pay for the repairs and perhaps it was this issue of payment which sparked the controversy leading to this litigation till date. Indeed it is difficult for a complainant to succeed with his claim unless he discharges the onus of proof and as discussed above in the case in hand the complainant has not been able to prove beyond doubt that there was a manufacturing defect in the engine of the tractor. Likewise there is no report about the tyres of the tractor being old.

In view of the discussions made above, we find that the instant appeal deserves to be allowed. Accordingly, the appeal stands allowed. The impugned judgment is quashed and the complaint dismissed with costs throughout.

The complainant may take away his tractor from the garage of the appellants. The money deposited by the appellants in compliance to the interim order may be refunded to them.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


(RAM PAL SINGH)
MEMBER

Asif