M/S. EICHER MOTORS LTD V. AVINASH SHETYE & ANR.

M/S Eicher Motors Ltd. Vs. Avinash Shetye & Anr.

1. M/S. EICHER MOTORS LTD.
102, INDUSTRIAL AREA NO. 1, PITHAMPUR,
DISTRICT-DHAR
MADHYA PRADESH-454775

……..Petitioner(s)

Versus

1. AVINASH SHETYE & ANR.
R/O. HOUSE NO. 9, DEMPO COLONY, DHABDHABA
BICHOLIM,
GOA
2. M/S. DEMPO MARKETING CO. PVT. LTD.,
DEMPO ESTATE NH-17, PARXET, GUIRIM BARDEZ,
GOA-403507

……..Respondent(s)

Case No. : REVISION PETITION NO. 166 OF 2017

Date of Judgement : 05 December 2023

Judges : JUSTICE SUDIPAHLUWALIA

DR. INDER JIT SINGH

For Petitioner : MS. GUNJAN SINHA JAIN, ADVOCATE
MR. MANU BAJAJ, ADVOCATE.

For Respondent : FOR RESPONDENT-1 : MR. PUNDAUK N RAIKER,

ADVOCATE
FOR RESPONDENT-2 : MS. GUNJAN SINHA JAIN, ADVOCATE

Facts:

- ***Complainant purchased Eicher tipper truck from Dempo Marketing in 2006 for Rs. 9,48,000***
- ***Truck manufactured by Eicher Motors***
- ***Truck registered as GA-04-T-3370***
- ***Complainant got truck body fabricated for Rs. 1,15,000***
- ***Availed loan for purchase, had to pay monthly installments of Rs. 23,260***
- ***Truck warranty – 18 months or 1,50,000 kms or 2000 engine hours***
- ***From October 2006, used truck for ore transportation with Dempo Mining Corp***
- ***Earned average Rs. 3,500 per day***
- ***Faced frequent breakdowns due to defective engine and other components***
- ***Faced losses due to delays by Eicher Motors in providing service***
- ***Vehicle had to be taken for repairs frequently rendering it unusable***
- ***Suffered earnings loss for at least 35 days before issuing legal notice on 10.08.2007***

District Forum's Decision:

- ***Dismissed the complaint on 07.03.2016***
- ***Held that complaimant overloaded the truck beyond permissible limit as evidenced by letter from Dempo Mining***
- ***Petitioners provided necessary and timely service as per job cards***
- ***Defects attributable to mishandling and overloading by complainant***

State Commission's Decision:

- *Allowed the appeal and set aside district forum order on 08.11.2016*
- *Evidence showed recurring breakdowns and replacement of major parts*
- *Defective vehicle unfit for commercial use*
- *No proof that Dempo Mining overloaded the vehicle*
- *Ordered refund of Rs. 11,10,000 to complainant with interest*

Arguments by Parties in Revision Petition:

Petitioners:

- *Complainant overloaded vehicle beyond approved weight capacity despite warnings*
- *Breakdowns attributable to overloading and mishandling*
- *Certificate by Dempo Mining showed overloading*
- *State Commission overlooked importance of this certificate*

Respondent:

- *Certificate pertained to different vehicle not belonging to complainant*
- *Certificate is private document not authenticated by complainant*
- *Petitioners submitted forged documents, committed perjury*

Referred Laws and Sections:

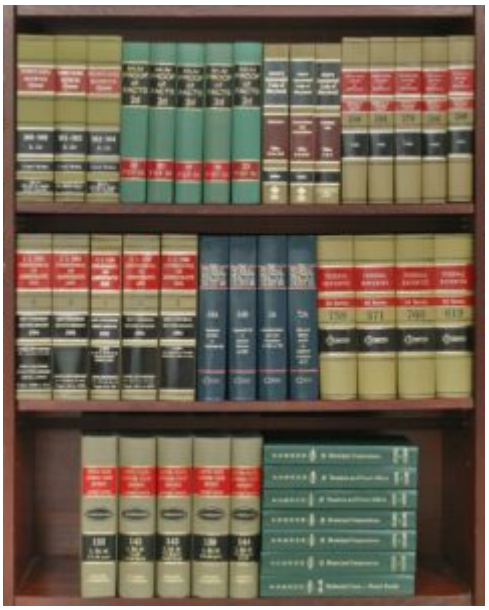
- *Filed under Section 21(b) of Consumer Protection Act 1986*
- *Order dated 08.11.2016 passed in F.A. No. 25 of 2016 by Goa State Commission*

Court’s Observations and Decision:

- *Doubts over genuineness of Dempo Mining certificate as no linkage between that company and petitioner Dempo*

Marketing

- ***Complainant rightly sought to cross-examine petitioner's witness regarding certificate but witness gave evasive replies***
- ***State Commission rightly did not rely upon said certificate***
- ***No grounds to interfere with State Commission order***
- ***Dismissed the revision petition, parties to bear own costs***



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Full text of Judgement :

1. This Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 against the impugned Order dated 08.11.2016 passed by the State Consumer Disputes Redressal Commission, Goa, Panaji in F.A. No. 25 of 2016, vide which the Appeal
filed by the Complainant/Respondent was allowed and the Order of the District Forum was set-aside.
2. The material facts of the case are that the Complainant acquired an 'Eicher' Tipper Truck, a heavy commercial vehicle, on 30.09.2006, for an amount of Rs. 9,48,000/- from "Dempo

Marketing Co. Pvt. Ltd." (Petitioner No. 2). This vehicle was manufactured by "Eicher Motor Ltd." (Petitioner No.1) and registered under No. GA-04-T-3370. Subsequently, the Complainant had the body of the truck fabricated by M/s Gajanan Engineers, Bicholim Industrial Estate, incurring a cost of Rs. 1,15,000/-. The truck was purchased through a loan from a financial institution, constraining the Complainant to pay a monthly instalment of Rs. 23,260/- to the said institution. The vehicle came with a warranty covering the aggregates of the truck for 18 months or 1,50,000 kilometres or 2000 hours of engine operation, whichever would occur earlier. Commencing from 10.10.2006, the Complainant engaged the vehicle for the transportation of ore with "Dempo Mining Corporation Private Limited", earning an average of Rs. 3,500/- per day from its use. However, the vehicle experienced recurrent breakdowns, primarily due to a defective engine, which proved to be irreparable. Additionally, various components such as the headlights assembly, hoses, clutch disc assembly, and clutch cover assembly required frequent replacement. Services rendered by Petitioner No. 1 were consistently delayed, resulting in prolonged periods of inactivity for the vehicle. Inquiries made with other owners of similar vehicles indicated that they also faced losses due to frequent breakdowns of their vehicles. Moreover, doubts were cast on the technology employed in the manufacturing of the said vehicle by the manufacturers themselves. Hence, in comparison to similar vehicles of alternative makes, the present vehicle appeared defective and exhibited technical failures. Consequently, the Complainant suffered significant financial losses as the vehicle had to be consistently taken to the dealer's garage for repairs, rendering it unusable with Petitioner No. 2. As a result, the Complainant experienced earnings loss for at least 35 days till the Complainant issued a Legal Notice on 10.08.2007. The failure of the Petitioners to honour the warranty and provide timely service resulted in the said vehicle being rendered idle and unusable in the dealer's garage. Such situation left the Complainant without

any income, consequently impeding his ability to fulfil the instalment payments to the financing institution from which the loan for the truck's purchase was procured. Aggrieved by the acts of the Petitioners, the Complainant filed his complaint before the Ld. District Forum, North Goa.

3. The District Forum vide its Order dated 07.03.2016 dismissed the Complaint. The relevant extracts of the said Order are set out as below-

"19. Ongoing through the records, we now proceed to record our findings on the merits of the case. We find that the Complainant has mishandling the said vehicle by overloading the vehicle. As the certificate issued by the transport Authority, the weight is supposed to be 16,200 kg after the load. But the vehicle load is shown more than 16,200 kg as per the letter issued by Dempo Mining Corporation Pvt. Ltd. showing the transportation done by the Complainant with the said truck for the month of October 2007.

20. The Opposite Party had provided the necessary service to the Complainant and serviced the vehicle whenever the Complainant took his vehicle for repair /servicing as per the jobs cards which was relied by the Complainant himself.

21. The Complainant failed to maintain his said vehicle and overloaded. Though Complainant submitted that said vehicle is purchased for his livelihood, but it is evident that the Complainant secretly using the said vehicle for the commercial purpose by overloading the said vehicles, which is clear from the letter relied by the Opposite Party issued by the Dempo Mining Corporation showing the weight carried by the said vehicle.

22. If the Complainant had brought the said vehicle for his livelihood then, the Complainant would follow the instructions provided by the Opposite Party at the time of the purchase of the vehicle, and well handled the vehicle. It is evident that the Complainant had overloaded the vehicle and hence there is frequent break downs of the said vehicle.

23. We also perused both the Surveyor reports filed by the parties, it seems to be a minor break down of the said vehicle.

24. Admittedly, the Complainant took the vehicle to the premises of Opposite Party No.1 on 06/11/2007 and left it there, and as already stated that is now an-admitted position. The Complainant has not given any reason as to why he did so nor made a mention of this fact either in his Complaint filed on 06/02/2008 or for that matter in the affidavit in evidence filed on 16/10/2008.

25. On facts and circumstances of this case, therefore we dismissed the Complaint. Complaint dismissed."

4. Aggrieved by the Order of the District Forum, the Complainant filed Appeal before the State Commission. The State Commission allowed the Appeal vide impugned Order dated 08.11.2016. The relevant extracts of the impugned Order are set out as below –

"23. The evidence on record sufficiently establishes that the truck of the Complainant had recurring problems. Indisputably, the truck of the Complainant had to be repaired frequently and major parts had to be replaced like rear axle shafts, two replacements each of clutch disc, clutch plate assemblies, pressure plates, exhaust brake, flange, drive pinion bearings and headlights during the period between January 2007 to June 2007. Major parts have been replaced more than once. Most importantly, even a major overhaul of the differential and engine, with replacement of various engine assembly parts and accessories such as piston ring set STD, gasket cylinder head and Con rod clearing set STD assembly, primary element air cleaner, bypass filler, etc., had to be done merely at 32,678 kilometres, which is normally required after the vehicle runs over one lakh kilometres….

25. It is established that the vehicle had some serious defect, due to which it was frequently breaking down and had

to be taken to the workshop of the OP No. 1 for repairs. A commercial vehicle cannot be operated in such a manner. The impugned order is not in accordance with the settled principles of law and is liable to be quashed and set aside. The vehicle should returned to the OPs and the consolidated expenses of Rs. 11,10,000/- must be refunded to the Complainant along with simple interest at the rate of 9% per annum as from 06/11/2007 till the date of actual payment. The vehicle shall be transferred back in the name of the OP No. 1.

26. The Complainant has further prayed for Rs. 1,22,500/- as compensation towards financial losses suf ered by him in his business and Rs. 50,000/- as compensation towards mental agony and other losses along with interest. As already stated earlier, the Complainant has earned about Rs. 12,00,000/- by engaging the said truck with Dempo Mining Corporation Pvt. Ltd. We are not inclined to grant any compensation towards financial losses and mental agony, etc.

27. In the result, we pass the following:
QCDR.
(a) The impugned order is quashed and set side.
(b) The Complaint is partly allowed.
(c) The OPs shall, jointly and severally, pay to the Complainant an amount of Rs. 11,10,000/- along with interest at the rate of 9% per annum from 06/11/2007 till the date of actual payment. The vehicle shall be transferred in the name of OP No. 1.
(d) The OPs shall, jointly and severally, pay to the Complainant costs of Rs. 25,000/-.”
5. Aggrieved by the Order of the State Commission, the Petitioners filed the present Revision Petition raising the following issues –
a. That the Petitioner had explicitly directed the Respondent to operate the vehicle solely with trained drivers and adhere strictly to designated speed limits when the vehiclecarried a load. Furthermore, clear warnings were issued against

exceeding the permissible weight limit for the vehicle. Despite these explicit instructions, the Respondent persistently ignored these directives and continued to utilize the vehicle for commercial purposes while consistently surpassing its approved weight capacity. The State Commission overlooked these crucial details in their deliberation process;

b. That the State Commission wrongly stated that by simply overloading the vehicle, designed specifically for mining areas, caused frequent breakdowns. It's important to note that despite the vehicle being specially manufactured, it had a specified capacity for optimal functioning, which was 16,800 kilograms. However, Respondent used it for commercial purposes where it was consistently mishandled. Not only was the vehicle overloaded, but it was also driven at speeds beyond the recommended limits, leading to recurring issues with the vehicle;

c. That the State Commission overlooked the significance of the certificate presented by the Petitioner from Dempo Mining Corporation Pvt. Ltd., explicitly indicating the vehicle's overloading. The State Commission erroneously dismissed this certificate as a private document, disregarding its credibility solely because Respondent hadn't signed it to authenticate its validity.

6. Ld. Counsel for Petitioners has argued that it cannot be disputed by the Respondent that the said vehicle had already been used for 38,954 kms and that the said vehicle was being overloaded while being used for transportation of ore. It is also pertinent to mention that whenever the vehicle was brought for services/repairs, the Respondent while accepting the truck signed on the job cards without any demur being satisfied with the work done by the Petitioner; That the State Commission accepted the findings of the Expert Report of Mr. M.R. Shenvi without considering the objections filed by the Petitioners to the same. The Expert Report of M.R. Shenvi overlooks the effect of overloading the said vehicle and erroneously states that "There is nothing before us to show

that the Dempo Mining Company has overloaded the vehicle under their contract, in breach of the laid down maximum load capacity of the vehicles operating in their jurisdiction." In support of their contentions, the Ld. Counsel for Petitioners referred to the cases of "Laxmi Engineering Works v. P.S.G. Industries Institute, (1995) 3 SCC 583", "Cheema Engineering Services v. Rajan Singh (1997) 1 SCC 131", "Sunil Kohli & Anr. v. Pureearth Infrastructure Limited, (2020) 12 SCC 235"

7. Ld. Counsel for Respondent has argued that the Petitioners have produced a certificate issued by Dempo Mining Corporation Pvt. Ltd. titled as "Load carried by Terra 16 Tipper" to prove that the truck was overloaded. The State Commission had observed in its impugned Order that Petitioners have produced a certificate in respect of truck no. GA-04/T-6677 belonging to one Sameer Mayenkar and not of the truck in the complaint; That the State Commission further observed that the certificate is a private document not signed by the Complainant acknowledging the genuineness of the same, and therefore it cannot be relied upon; Further, the Petitioners have committed an act of forgery by submitting forged documents before this Commission and hence have committed the act of perjury for which they should be prosecuted in accordance with law.

8. This Commission has heard the Ld. Counsel for both sides, and perused the material available on record.

9. The basic grievance of the Petitioners is that the Ld. State Commission did not consider its contention that defects in the vehicle were on account of wrong usage by the Complainant himself who had consistently been overloading the same beyond its permissible capacity after having allegedly given the vehicle on hire to "Dempo Mining Corporation Pvt. Ltd.".

10. Considering the close similarity in the first name of the Respondent No.2, who was subsequently transposed as a Co-Petitioner vide an earlier Order passed on 15/05/2019, we sought clarification from the Petitioner's Counsel as to whether there was any connection between "Dempo Marketing

Company Private Limited" and "Dempo Mining Corporation Private Limited" which had purportedly issued the relevant load carrying the Table pertaining to vehicle number "GA-01/U 3370", although the actual registration number according to the Complaint case happens to be "GA-04-T-3370" .

11. In answering our query, Ld. Counsel for the Petitioners submitted that there was no connection or linkage between the two Companies. If that be so, the genuineness of such documents would come under a grave doubt, in view of the fact that it was certainly not issued from the own Records of the Petitioner "Dempo Marketing Company Private Limited" and the Complainant from his side had specifically raised very direct suggestions to cross-examine the witness of the Opposite Parties/Petitioners who had led such documents into Evidence.

12. The relevant questionnaire for cross-examination is on Page numbers 234-235 of the Paper-Book, and the answers given in the Affidavit in Reply by the concerned witness are on pages 236-237.

13. It was specifically claimed on behalf of the Complainant that the aforesaid document issued by 'Dempo Mining Corporation Pvt. Ltd.' is a sham, forged and fabricated document which was never issued by the said entity, nor signed by any authorised person of the concerned Company, and that even the seal on the said letter/document is not authorised. These suggestions were only denied in a routine manner by the witness appearing on behalf of the Opposite Party No. 1 namely "Dempo Marketing Co. Private Limited", but the witness never mentioned as to who or in what capacity had signed on the said document, and on which date. Consequently the Ld. State Commission committed no irregularity in not relying upon the said document which in any case had not been issued on behalf of either of the Opposite Parties themselves, and there was nothing to indicate how the same had come into their custody from the concerned Company, which is a complete stranger to the proceedings in the concerned Fora, when no affidavit of any authorised person from the said Company was filed to prove its genuineness.

14. For the aforesaid reasons, this Commission finds no grounds to interfere with the well- reasoned order of the Ld. State Commission.

15. The Revision Petition is therefore dismissed. Parties to bear their own costs.

–END–