NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 2794 OF 2017

(Against the Order dated 14/06/2017 in Appeal No. 719/2014 of the State Commission Telangana)

1. SEELAM SRINIVASA CHENCHI REDDY
R/O. H. NO. 4-32-1/55, SAPTAGIRI COLONY, KUKATPALLY,
HYDERABAD-500072 .....Petitioner(s)

Versus

1. M/S. ASHOK LEYLAND LTD. & 3 ORS.
3RD FLOOR, DHRAUPATHI CHAMBERS, 31, SAROJINI DEVI ROAD, NEXT TO ITC AGRI MARKETING OFFICE,
SECUNDERABAD-500003
2. GM STATES ASHOK LEYLAND
CORPORATE OFFICE NO.1 SARDAR PATEL ROAD, GUINDY,
CHENNAI - 600032
TAMIL NADU
3. INTEGRATED ENTERPRISES (I) LTD.
1ST FLOOR KENCES TOWERS, NO. 1, RAMAKRISHNA STREET NORTH USMAN ROAD,
CHENNAI - 600017
TAMIL NADU
4. AUTOMATIVE MANUFACTURERS PVT. LTD.
PLOT NO. 66, BLOCK NO. 613 (PART) 614, 715 AND 717, TRANSPORT NODE ASTALLI,
AHMEDABAD-382427 .....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE PETITIONER :	MR K MARUTI RAO, ADVOCATE WITH MR K SUBBA RAO, ADVOCATE
FOR THE RESPONDENT :	FOR RESPONDENTS NOS.1, 2 & 4 MR VIJAY VALSAN, PROXY COUNSEL (WITH AUTHORITY LETTER) FOR RESPONDENT NO.3 EX PARTE ON 05.03.2018

Dated : 01 January 2024

ORDER

1. This revision petition under section 21 of the Consumer Protection Act, 1986 (in short, the "Act') assails the order dated 14.06.2017 in First Appeal No. 719 of 2014 of the State Consumer Disputes Redressal Commission, Telangana, Hyderabad (in short, the 'State Commission')

arising from the order dated 17.11.2014 of the District Consumer Disputes Redressal Forum-III, Hyderabad (in short, the 'District Forum') in Consumer Complaint no. 462 of 2013.

2. The facts, as per the petitioner, are that he had purchased a Tipper (Model 2013) on 31.03.2013 from the respondent by paying Rs 16,00,879/- but had been delivered a 2012 model vehicle by the respondent for which Rs 50,000/- was required to be refunded. The vehicle had various problems and he had complained about this by email on 10.05.2013 and 18.05.2013. On 30.04.2013 the vehicle stalled due to air lock. According to the petitioner, the cause for the air lock was the ram foundation collapse at sub frame junctions resulting in crushing of the diesel main pipe. On 02.05.2013 the vehicle was taken to Aslali Workshop, nearly 150 km away where the mechanic opined that there was a manufacturing defect. The vehicle was in the workshop till 09.05.2013 which resulted in loss in income as he could not use the vehicle. His complaint before the District Forum was allowed on contest and Rs 2,00,000/- awarded towards punitive damages, Rs 1,00,000/- towards compensation and Rs.2,000/- towards costs. On appeal, the State Commission set aside the order of the District Forum holding that the petitioner herein had failed to prove that the vehicle had any manufacturing defect or that it was lying idle in the workshop from 01.05.2013 to 30.06.2013 and that the loss on account of this amounted to Rs. 2,00,000/-. This order is impugned before us on the grounds that the State Commission erred in not appreciating that the vehicle's presence in the workshop was established by the fact that a customer's copy of a document dated 23.05.2013 issued by it was on record and that the financier/Hinduja Leyland authorized, vide its letter dated 01.04.2014, the taking over of possession of the vehicle from the parking yard of Aslali workshop on account of default in payment.

3. I have heard the learned counsel for the parties and given thoughtful consideration to the material on record.

4. The order of the State Commission has held that it was not evident from the records that the sale of the vehicle of 2012 model as against 2013 model resulted in a loss of Rs 50,000/- and therefore there was no force in this argument. It was also held as follows:

> *14. (i) The further contention of the appellants is that complainant had failed to produce evidence to show that the tipper was lying idle from 1.5.2013 to 30.06.2013 and hence he is not entitled to get Rs.2 lakhs towards idle charges.*
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> *(ii) The first respondent/complainant failed to prove that the vehicle is having manufacturing defect. There is also no evidence on record to show that the vehicle was lying idle from 1.5.2013 to 30.06.2013 in the premises of the OP No.4. Counsel for the 3rd appellant/OP No.4 contended that the Tipper was handed over to them by the complainant on 6.5.2012 for two days and on 23.05.2012 thereafter. There is no evidence on record to show that the vehicle was in the custody of the appellants/opposite parties during the period from 1.5.2013 to 30.06.2013 and that he sustained loss at Rs.2,00,000/- towards idle charges.*
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> *(iii) Hence there is force in the contention.*

15. After considering the foregoing facts and circumstances and also having regard to the contentions raised on behalf of the appellants/opposite parties 1,3 and 4 and the respondent/ complainant, this Commission is of the view that the respondent/complainant failed to prove that the vehicle was kept with the appellants/opposite parties for the period from 1.5.2013 to 30.06.2013 and he sustained loss to a tune of Rs.2,00,000/- and that there is unfair trade practice on the part of the appellants and the order of the District Forum is liable to be set aside. This Commission answered Point No1 accordingly in favour of the appellants/Ops 1, 3 and 4 and against the respondent/complainant.

16. In the result, the appeal is allowed setting aside the impugned order and consequently the complaint is dismissed. There shall be no order as to costs.

[Emphasis added]

5. On behalf of the respondents it was contended that there was no evidence on record to prove that there was a manufacturing defect in the tipper. Improper use of the vehicle is alleged by the respondent. It was also contended that there was no evidence shown that the petitioner had been charged Rs 50,000/- in excess for the vehicle due to the model sold which required refund. Lastly, it was also contended that no evidence to prove that the vehicle was lying idle in the workshop resulting in loss of income to the petitioner was brought on record. Hence, the order of the State Commission was stated to be in order.

6. From the foregoing, it is apparent that the petitioner has failed to bring on record any Expert's opinion with regard to the manufacturing defect in the Tipper in question. Under the Act, a technical opinion under section 13 (c) has not been obtained. Hence, the averment regarding 'manufacturing defect' does not sustain. The District Forum has rightly concluded that

Simply because the Opposite Party misrepresented and gave the vehicle of the previous year make, the Complainant is not entitled for replacement of the vehicle on that ground alone. The Complainant has not established that the vehicle is having manufacturing defect and it is beyond repair. Further no expert/technician gave any opinion or report that the subject vehicle is having manufacturing defect. In the said circumstances, we are of the view that it is not just to direct the Opposite Parties to replace the vehicle.

The issue of the vehicle lying in the workshop from 01.05.2013 to 30.06.2013 is also not supported by any evidence or affidavit from the workshop authorities, although it is evident that the vehicle was in the workshop on certain dates during this period on the basis of job cards. The District Forum's order in this regard is based upon the job cards and Exhibit A 4 relating to the vehicle being received at the workshop on 23.05.2013. The order of the District Forum awards Rs.2,00,000/- as a lumpsum for idle charges as well as the supply of the previous year's model by the respondents as punitive damages. However, the award of punitive damages has not been established by any evidence, especially since the issue of 'manufacturing defect' has been clearly rejected.

7. In the light of the foregoing, I do not find any reason to interfere with the order of the State Commission. The revision petition is accordingly dismissed as without merits.

9. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER