

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 01.08.2017

Date of hearing: 04.09.2024

Date of Decision: 28.11.2024

FIRST APPEAL NO- 397/2017

IN THE MATTER OF

MR. R.N. AZAD

S/O LATE SH. KARE LAL

R/O H. NO: 108, ARUNODAYA APARTMENTS,

VIKASPURI, NEW DELHI-110018

(Through: Mr. Ashok Kumar, Advocate)

...Appellant

VERSUS

M/S. HIMGIRI CARS PVT LTD.,

C-1 UDYOG NAGAR, INDUSTRIAL AREA,

PEERA GARHI, NEW DELHI-110041

(Through: Mr. Akshay Mehra, Advocate)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Ashok Kumar, counsel for the Appellant, E-mail: anichwalashok@gmail.com.
Mr. Akshay Mehra, (proxy) counsel for the Respondents, E-mail: adv.akshaymehra@gmail.com.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

“Sh. R. N. Azad named above here in the complainant has filed the present consumer complaint under section 12 of the Consumer Protection Act for directions to M/s Himgiri Cars Pvt. Ltd. here in after in short referred as the opposite party to refund Rs. 11,845/- paid by the complainant to the opposite party for service and parts charges, Rs. 26,00/- paid by the complainant as crane service charges, Rs. 26,000 paid by the complainant for repair/fresh service of his car to M/s Deep Hyundai, Rs. 4,000/- spent by the complainant on public transport, Rs. 11,000/ of litigation expenses and Rs. 1,00,000/- a Compensation for mental and physical agony suffered by the complainant on account of unfair trade practice and deficiency in service on the part of the opposite party.

The brief relevant facts necessary for disposal of the present complaint as stated are that the complainant on 31.08.2013 delivered his car bearing registration .no, DL8CS7944 to the opposite party for routine service. The opposite no. 1 charged Rs. 11,845/- for routine service, replacement of par including flushing gear oil and filling fresh oil. The complainant soon after the service of his car telephonically complained that he was not satisfied with the service of the car as performance of the car was not good even after service and was running as it was prior to the service by the opposite party. He requested executive of the opposite party for again proper checking of the car and do the needful. But the executive of the opposite party flatly refused to again check the car. Even washing and cleaning of the car had not been done by the employees of the opposite party despite the opposite party charged for dry-cleaning.

That the complainant received two letters dated 13.09.2013 from Sh. Nafees Ahmed, Service Manager of the opposite party regretting inconvenience caused to complainant during his last visit and for poor cleaning of the car.

That the complainant on 15.10.2013 had gone to Airport to see-off his daughter-in-law. But while returning the car suddenly stopped with jerk due to 617 breakdown in middle of the road at Airport Terminal -3. The complainant was

Whereas the case of complainant is that he was not satisfied with the service and he made complaint to the officials of the opposite party on phone.

Therefore, Service Manager of the opposite party wrote to two letters Exhibits C-5 and C-6 both dated 13.09.2013 regretting inconvenience to the complainant and providing washing and cleaning. On 15.10.2013 the car stopped in middle of road due to break down. The car was taken to the M/s Deep Hyundai for repairs and service as the employee of the opposite party refuse to repair car without charges.

The case of the complainant further is that the staff of the M/s Deep Hyundai in Exhibit C-9 retail invoice and cash memo as specifically written" gear oil N/A in vehicle that is why gear box seize". The case of the complainant is also that despite the fact the opposite party charged for draining the old engine oil and re-filling the new engine oil did not drain the old engine oil and refill the new engine oil, therefore, the car was stopped in middle of the road due to breakdown and the car seized and he had to spent huge amount in transporting the car to the M/s Deep Hyundai and repair of the car.

Whereas the case of the opposite party is that the car was serviced by technical staff of the opposite party. They drained

the old engine oil and refilled new engine oil. The complainant was satisfied with the service. There was no unfair trade practice and deficiency in service on the part of the opposite party.

The complainant in support of his case has relied upon his affidavit only Which is rebutted by the affidavit of Sh. D.K. Sharma, DGM where as Exhibit C-9 retail invoice/cash memo is not of any help of the complainant. Wherein following is written”

“Gear Oil N/A in vehicle that is why gear box seized”

2. The District Commission after taking into consideration the material available on record passed the order dated **09.06.2017**, whereby it held as under:

“There is nothing on the record to show that the opposite party did not drained old engine oil and re-fill new engine oil on 31.08.2013 at the time of the routine check-up and service of the car. The car was driven by the complainant about 2000 kilometer from 31.08.13 to 15.10.2013 after service of the car on 31.08.2013 till breakdown of 15.10.2013. Contention of the learned counsel for the opposite party is that without engine oil the car could not run about 2000 kilometers from 31.08.2013 to 15.10.2013. The complainant has failed to show how a car can cover 2000 kilometers without engine oil. Therefore, the complainant has failed to show that the opposite party did not

drain old engine oil and re-fill new engine oil at the time of service on 31.08.2013. Hence, there is no unfair trade practice and deficiency in service on the part of the opposite party.

In the light of above discussion and observations the complainant failed to prove any unfair trade practice and deficiency in service on the part of the opposite party, Therefore there is no merit in the complain. The same fails and is hereby dismissed.”

3. The Appellant/Complainant has filed the present appeal, challenging the order passed by the District Commission, arguing that the Commission failed to adequately consider the documentary evidence, the factual position, and the circumstances surrounding the case. The Appellant contends that the District Commission erred in disregarding the absence of engine oil in one of the invoices from the authorized workshop. Additionally, the Appellant submits that the District Commission wrongly concluded that flushing the old engine oil and refilling with new oil was unnecessary for the old engine, given that the car was to be used for the next 1,774 kilometers. The Appellant had specifically paid for this service. Moreover, the Appellant argues that the Respondents have not properly contested the facts as presented, as they failed to offer a proper defense by not denying the Appellant's claims.
4. The Respondent submitted their written submissions, denying all allegations made by the Appellant and asserting that the appeal should be dismissed on the grounds that the burden of proving a deficiency in service lies with the Appellant/Complainant. The Respondent further

stated that the Appellant was satisfied with all the services rendered, except for the oil flushing and refilling. They emphasized that the best skills were applied in servicing and repairing the vehicle to the Appellant's complete satisfaction. According to the Respondent, there was no error in the impugned order, as the District Commission had thoroughly examined the entire material on record before passing the order.

5. We have carefully reviewed the Appeal, the Written Submissions filed by the Respondents, and the relevant legal precedents, including the judgment of the Hon'ble Supreme Court in ***A. Raghavamma and Anr. v. A. Chenchamma & Anr. AIR 1964 SC 136***, as well as the ***Civil Appeal No. 5759 of 2009 in SGS India Ltd. v. Dolphin International Limited***, which was further emphasized in the judgment of the Hon'ble National Consumer Commission in ***Ankur Seeds Pvt. Ltd. and another v. Motilal and another in Revision Petition No. 381 of 2012***.
6. The main question for consideration before us is ***whether the Respondent is actually deficient in providing its services to the Appellant.***
7. Upon perusal of record, it is evident that the Appellant has failed to present any tangible evidence to substantiate the claim of deficient services on the part of the Respondent. The core allegation made by the Appellant is that the Respondent did not flush the old engine oil and did not refill the engine with new oil as required. However, the Appellant's vehicle continued to function for 1,774 kilometers before it ultimately broke down. The Appellant contends that the vehicle could have continued to operate on the old oil as it was, yet there is no compelling

evidence or technical analysis provided to support this assertion. In the absence of credible evidence that would substantiate the Appellant's contention, we find the argument unconvincing. The fact that the vehicle operated for a considerable distance without any reported mechanical failure before its breakdown strongly suggests that the servicing provided by the Respondent, including the oil change, did not constitute a deficiency.

8. Furthermore, the Appellant's argument that the Respondent is guilty of providing deficient services merely because there was no explicit denial of the allegations holds no merit. The mere fact that the vehicle eventually broke down does not automatically imply that the services provided were inadequate. It is crucial to note that the Appellant did not raise any concerns at the time of servicing and, in fact, was satisfied with the work done until the point of the vehicle's breakdown. Additionally, the Appellant has not proven that the non-availability of engine oil, as alleged, impacted the functioning of the vehicle. The Appellant himself has acknowledged that the oil change was a specific service for which he paid. Therefore, it cannot be reasonably concluded that the services were deficient when the Appellant continued to use the vehicle for 1,774 kilometers without any apparent issues related to the oil change. The absence of any immediate or significant adverse effects post-servicing undermines the claim of deficiency in service.
9. In view of the forgoing, we are in agreement with the reasons given by the District Commission and fail to find any cause or reason to reverse the findings of the District Commission. We hold that the District Commission promptly considered all the facts and documentary evidence.

Resultantly, *we uphold the Judgment dated 09.06.2017 passed by the Consumer Disputes Redressal Forum (West), Govt. of NCT of Delhi, 150-151 Community Centre, C-Block, Janak Puri, New Delhi – 110058.*

10. Consequently, *the present Appeal stands dismissed* with no order as to costs.

11. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.

12. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.

13. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On:

28.11.2024