

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, ERNAKULAM

Dated this the 26th day of August, 2025

Filed on: 20/07/2018

PRESENT

Shri. D.B. Binu
Shri. V. Ramachandran
Smt. Sreevidhia T.N

Hon'ble President
Hon'ble Member
Hon'ble Member

CC.No. 300 of 2018

COMPLAINANT:

Sunitha Binukumar, W/o Binukumar, Chelackal House, Varekkat Road,
Ponnurunni, Vyttila, Pin-682019.

*(Adv. Rajesh Vijayendran, Priyanka Gopi, 35/191, Automobile Road,
Palarivatom.P.O, Kochi-682025.)*

VS

OPPOSITE PARTIES:

1. M/s Bismi Appliances, Panicker's Foundation, Pettah Junction, Poonithura,
PIN-695024.

(Rep. by T.J.Lakhmanan, Megha Arcade, Power House Road, Cochin-18 for 1st OP)

2. M/s Philips India Ltd, Sunny Side, C Block, 3rd Floor, No.8/17, Shafee
Mohammed Road, Second St, Chennai-600006, India, Rep by its Manager.

3. M/s Team Tech, Authorized Service Centre of Philips, 53/1398A, Kottayil
House, P & T Lane, Cochin, Kerala, Rep by its Manager.

FINAL ORDER

D.B. Binu, President

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 12 of the Consumer Protection Act, 1986. The complainant, a housewife, purchased a Philips LED TV (Model 39PFL3539) on 11.04.2015 from the 1st Opposite Party for ₹27,000/-, along with

a Bismi Care Extended Warranty for ₹2,690/-. She was assured that the manufacturer's 3-year warranty offered by the 2nd Opposite Party would be followed by an additional 2-year extended warranty from the 1st Opposite Party, providing identical coverage for a total of 5 years. The 3rd Opposite Party is Philips' authorised service centre.

On 02.05.2018, shortly after the expiry of the manufacturer's warranty and during the extended warranty period, the TV developed a sound defect. Despite her complaint, the 3rd Opposite Party demanded ₹2,200/- for repairs, stating the complaint was registered under "paid category." The 1st Opposite Party refused free repairs, claiming the warranty had expired.

Alleging deficiency in service and unfair trade practice, the complainant seeks directions to repair the TV free of cost under the extended warranty, compensation of ₹25,000/- for hardship and mental agony, and costs of proceedings.

2. NOTICE:

The Commission issued notices to all Opposite Parties on 08.08.2018. Opposite Party No. 1 was served on 11.08.2018. Despite such service, it failed to file its written version within the statutory period, and the matter proceeded ex parte against it. The Opposite Party No. 2 was served on 10.12.2019. Despite such service, it also failed to file its written version within the statutory period, and the matter proceeded ex parte. The Opposite Party No. 3 was served on 11.08.2018 and subsequently filed its version in the case.

3. THE VERSION OF OPPOSITE PARTY NO. 3.

The Opposite Party No. 3 states that at no point in time did the complainant approach them directly with any service request or demand relating to the alleged defect in her Philips LED television.

They further contend that they do not possess any authorisation from Philips India Limited for the servicing or repair of Philips brand televisions. Since such authorisation is essential to undertake official service or warranty repairs on Philips products, they have no legal or contractual obligation towards the complainant in respect of the grievance raised.

Opposite Party No. 3 asserts that without the necessary authorisation, they cannot be considered a responsible or liable party in this dispute. Their inclusion as a party to the proceedings is therefore unwarranted and without basis.

Accordingly, Opposite Party No. 3 prays that, considering their lack of involvement and absence of authority to service the product in question, they be discharged from all liabilities and obligations claimed by the complainant in the present case.

4. EVIDENCE:

The complainant filed a proof affidavit in support of her case and produced five documents, which were marked and exhibited as Ext. A1 to Ext. A5, detailed as follows:

- **Ext. A1 – True copy of Invoice dated 11.04.2015.**
- **Ext. A2 – True copy of Warranty Card.**
- **Ext. A3 – True copy of the Extended Warranty Card by the Opposite Party No. 1.**
- **Ext. A4 – True copy of Lawyer Notice dated 01.06.2018.**
- **Ext. A5 – True copy of Postal Track Record.**

5. Points for Consideration:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice on the part of the Opposite Parties towards the complainant?
- iii) If so, whether the complainant is entitled to relief, and against whom?
- iv) Costs of the proceedings, if any.

6.ARGUMENT NOTES FILED BY THE COMPLAINANT

The complainant, a hapless housewife, approached this Commission in 2018 seeking to have her television set repaired free of cost under the Extended Warranty Scheme offered by the Opposite Parties, along with other consequential reliefs.

- a. On 11.04.2015, the complainant purchased a Philips 39PFL3539 # 38270 Model LED TV for ₹27,000/- (Ext. A1 – Invoice dated 11.04.2015) under a special scheme providing a 3-year warranty (Ext. A2 – Warranty Card). She also availed the Bismi Care Extended Warranty Scheme, paying an additional ₹2,690/- vide Invoice No. 310447 for an additional 2 years' warranty (Ext. A3 – Extended Warranty Card), with the same benefits as the manufacturer's warranty, commencing after expiry of the original period.
- b. On 02.05.2018, immediately after expiry of the 3-year manufacturer's warranty and during the extended warranty period (valid until 11.04.2020), the TV began malfunctioning. The complainant registered a complaint with the 1st Opposite Party on 03.05.2018.
- c. On 05.05.2018, a technician from the 3rd Opposite Party inspected the TV and reported that the speaker was defunct, estimating repair costs at

₹2,200/-, notwithstanding the extended warranty. The complaint was categorised by the 1st Opposite Party as a “paid” repair. The 1st Opposite Party refused to carry out free repairs under the extended warranty. A lawyer’s notice dated 01.06.2018 was issued (Ext. A4 – Lawyer Notice), but received no response. Postal tracking details confirming service are on record (Ext. A5 – Postal Track Record).

- d. From the first posting date, the Opposite Parties repeatedly sought time for settlement. Nearly seven years have passed without a settlement, leaving the TV defective and compelling the complainant to seek alternatives.
- e. The Opposite Parties neither filed versions nor adduced evidence. In contrast, the complainant filed her proof affidavit, and Exts. A1 to A5 were marked in support of her case. The Opposite Parties did not dispute the complainant’s contentions, nor did they produce any material to rebut the claim or to establish the absence of deficiency in service. It is undisputed that the TV was covered by the extended warranty. Hence, the complainant’s case stands proved, entitling her to all reliefs sought, including compensation for the prolonged hardship and mental agony suffered over the last seven years.
- f. However, given the lapse of nearly seven years since filing, repairing the TV now would serve no purpose. Therefore, in the alternative, the complainant prays for an order directing a refund of the TV’s purchase price, along with ₹25,000/- as compensation and costs.

7. ARGUMENT NOTE OF THE 1ST OPPOSITE PARTY:

- a. The complaint is not maintainable either in law or on the facts. The complainant has no cause of action against this Opposite Party.
- b. The complainant alleges defects in the Philips 39PFL3539 #38270 Model LED TV purchased on 11.04.2015 (Ext. A1 – Invoice dated 11.04.2015) and

covered initially under the manufacturer's 3-year warranty (Ext. A2 – Warranty Card), followed by an additional 2-year Bismi Care Extended Warranty (Ext. A3 – Extended Warranty Card). She claims the TV became defective after 3 years. However, no **expert evidence** has been adduced to establish the alleged defect. Expert opinion is essential to prove such defects, as held by the Hon'ble National Commission in *2018 (IV) CPJ 115*. The complainant's failure to produce expert evidence makes the dictum in that case squarely applicable here.

- c. The complaint is barred by limitation. The product was purchased in April 2015, and the case was filed in July 2018. Moreover, this Opposite Party was only the dealer. The complainant alleges a manufacturing defect, and as held by the Hon'ble Supreme Court in *Hindustan Motors v. Shivakumar* (2000 (10) SCC 654), a dealer is not liable for manufacturing defects.
- d. From the complainant's own pleadings, it is evident she approached the manufacturer (Opposite Party No. 2) and the authorised service centre (Opposite Party No. 3) with her grievance. This Opposite Party is unaware of the communications exchanged between them. The complainant's main prayer is to repair the TV, which falls under the manufacturer's and service centre's responsibility. The core issue is whether the TV is defective, which requires expert evidence — none has been produced.
- e. The complainant has also relied on Ext. A4 – Lawyer Notice dated 01.06.2018 and Ext. A5 – Postal Track Record, but these documents do not establish any deficiency in service on the part of this Opposite Party. As settled in *Ravneet Singh Bagga v. KLM Royal Dutch Airlines* (2000 KHC 865) and *SGS India Ltd. v. Dolphin International Ltd.* (Civil Appeal No. 5759 of 2009), the burden of proving deficiency lies on the person alleging it. The complainant has failed to discharge this burden.

- f. This Opposite Party has never caused any hardship or mental agony to the complainant, and she is not entitled to any relief, compensation, or costs from this Opposite Party.

It is noted that notices were issued by the Commission to all Opposite Parties. Opposite Party No. 1 and Opposite Party No. 2 were duly served but failed to file their written versions within the statutory period. Consequently, they were set ex parte. The complainant produced five documents, marked as Exbt. A1 and Exbt. A5, in support of her case.

The Opposite Party No. 2 did not attempt to appear before this Commission, participate in the proceedings, or take steps to set aside the ex parte order passed against The Opposite Party No. 2 . Such deliberate, illegal, arbitrary, and unjustified conduct amounts to deficiency in service and unfair trade practice, causing mental agony and hardship to the complainant.

Their conscious failure to file written versions, despite due service of notice, amounts to an admission of the allegations levelled by the complainant. In the absence of any rebuttal, the case of the complainant stands unchallenged as against Opposite Parties No. 1 and 2, and there is no reason to disbelieve her version.

The Hon'ble National Consumer Disputes Redressal Commission has taken a similar view in its order reported in **2017 (4) CPR 590 (NC)**.

We have meticulously considered the detailed submissions made by the complainant and the learned counsel for Opposite Party No. 1, and have thoroughly examined the entire record of evidence, including the argument notes filed by the complainant and Opposite Party No. 1. It is noted that Opposite Parties No. 2 and 3 have failed to submit their written argument notes.

(i): Maintainability of the Complaint

The complaint was filed under Section 12 of the Consumer Protection Act, 1986, alleging a deficiency in service and unfair trade practice. The complainant purchased the Philips LED TV from the 1st Opposite Party(**Ext. A1**), availed of the manufacturer's 3-year warranty from the 2nd Opposite Party(**Ext.A2**), and subsequently purchased an extended 2-year warranty from the 1st Opposite Party (**Ext.A3**).

The transaction was for domestic use and not for resale or commercial purposes. Hence, the complainant falls within the definition of "consumer" under Section 2(1)(d) of the Act. The complaint is maintainable.

(ii): Deficiency in Service and Unfair Trade Practice

- Opposite Parties No. 1 and 2 were duly served but failed to file written versions within the statutory period; they were proceeded against ex parte.
- Opposite Party No. 3 filed a version but denied authorisation to repair Philips TVs.
- The complainant filed a proof affidavit and produced Exts. **A1 to A5**, which remain un rebutted.

Burden of Proof and Expert Evidence Requirement

It is relevant to note that the complainant has not produced any expert opinion or technical report to substantiate that the defect was a manufacturing defect. In *Classic Automobiles vs. Lila Nand Mishra & Anr.* [I (2010) CPJ 235

(NC)], the Hon'ble National Commission held that the onus of proving a manufacturing defect lies on the complainant and such a claim should be supported by expert evidence.

However, in this case, the primary allegation is not merely the existence of a manufacturing defect but the refusal of the Opposite Parties to honour the extended warranty during its validity period. The failure to carry out free repairs under the extended warranty constitutes a breach of contractual obligations and amounts to a **deficiency in service** under Section 2(1)(g) and **unfair trade practice** under Section 2(1)(r) of the Act.

Opposite Parties No. 1 and 2 have committed a deficiency in service and engaged in unfair trade practices by refusing warranty service.

(iii): Entitlement to Relief and Liability

As the seller and issuer of the extended warranty, Opposite Party No. 1 is directly liable for non-honouring its terms.

Liability of Opposite Party No. 3:

Opposite Party No. 3's denial of authorisation to repair Philips TVs and the absence of any contractual nexus with the complainant mean that no direct liability can be fastened upon it. Although its inspection of the product and cost estimation corroborate the complainant's contention that the defect occurred during the warranty period, there is no evidence to show that Opposite Party No. 3 was obliged under law or contract to undertake repairs free of cost. Hence, Opposite Party No. 3 is exempted from its liability.

(iv): Costs of the Proceedings

Given the prolonged litigation of over seven years, the complainant is entitled to costs for mental agony, harassment, and avoidable expenses.

The deliberate refusal to honour a valid extended warranty undermines consumer trust and violates the principle that service providers must act fairly and reasonably. Such conduct constitutes clear deficiency in service and unfair trade practice, and justifies both compensatory and consequential relief to restore the complainant's position and deter similar misconduct.

We determine that Issues (i) to (iv) stand resolved in favour of the complainant. The evidence on record establishes a significant deficiency in service and negligence on the part of Opposite Parties No. 1 and 2. Their failure to honour the extended warranty during its subsistence caused the complainant substantial inconvenience, mental distress, hardship, and financial loss.

In view of the foregoing facts, circumstances, and legal position, we hold that Opposite Parties No. 1 and 2 are liable to compensate the complainant for the loss, mental agony, and harassment suffered by her.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties No. 1 and 2 shall repair the defect in the complainant's Philips LED TV (Model 39PFL3539) free of cost; **or**, if such repair is impracticable, pay the complainant the depreciated value of 50% of the original purchase price of the TV (**₹27,000/-** (Rupees Twenty-Seven Thousand only), i.e., **₹13,500/-** (Rupees Thirteen Thousand Five Hundred only), considering its age and usage at the time of defect.

- II.** The Opposite Parties No. 1 and 2 shall pay **₹15,000/-** (Rupees Fifteen Thousand only) to the complainant as compensation for mental agony, harassment, and hardship caused. This amount is awarded towards the proven deficiency in service and unfair trade practices, as well as for the mental agony, inconvenience, and physical hardships endured by the complainant.
- III.** The Opposite Parties No. 1 and 2 shall pay **₹5,000/-** (Rupees Five Thousand only) to the complainant towards the cost of proceedings.
- IV.** The complaint against Opposite Party No. 3 is dismissed, and Opposite Party No. 3 is exempted from liability for the reasons stated above.

Opposite Parties No. 1 and 2 are jointly and severally liable for the fulfilment of the above directions. These orders shall be complied with **within 30 (thirty) days** from the date of receipt of this order. In the event of failure to comply with the payment directions under Points I and II, the amounts awarded shall carry **interest at the rate of 9% (nine per cent) per annum** from the date of filing the complaint, i.e., **20.07.2018**, until the date of full and final realisation.

Pronounced in the Open Commission on this the 26th day of August, 2025.

D.B. Binu, President

Sreevidhia T.N, Member

APPENDIX

Complainant's Evidence:

- Ext. A1 – True copy of Invoice dated 11.04.2015.
- Ext. A2 – True copy of Warranty Card.
- Ext. A3 – True copy of the Extended Warranty Card by the Opposite Party No. 1.
- Ext. A4 – True copy of Lawyer Notice dated 01.06.2018.
- Ext. A5 – True copy of Postal Track Record.

Opposite parties' Evidence:

BR/

Date of Despatch

By Hand::

By post::