

**AIN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

26th day of November 2024
CC 01/16 filed on 31/12/15

Complainant : Mithun C.G., S/o Gangadharan, Chanassery House,
Velayanad Desom, Kuttanellur P.O.,
Thrissur – 680 672.
(By Advs. M.A. Biju & Nisha K.P, Thrissur)

Opposite Parties : 1) Avaran Associates, Rep.by its Manager,
Nr. Marthoma Church, Kuriachira P.O.,
Thrissur – 680 006.
2) Marikar Engineers Pvt. Ltd., Rep. by its Manager,
Vespa Division, Marikar Building,
Karunakara Nambiar Road, Nr. North Bus Stand,
Thrissur – 680 020.
3) Piaggio Vehicles Pvt. Ltd.,
Rep. by its Managing Director, 4th Floor,
Kumar Orion, Opposite to St. Mira's College,
Koregaon Park Road, Pune, Maharashtra – 411 001.
(OP 1 By Advs. V.R. Jyothish & V.K. Sathyajith etc.
Thrissur
OP 2 By Adv. P.N. Harish, Thrissur)

FINAL ORDER

By Sri. Ram Mohan R, Member :

The complaint in brief, as averred :

The complaint is filed under Section 12(1) of the Consumer Protection Act, 1986. The complainant claims to have purchased on 05/02/15 a 'Vespa VX 125 Scooter' (hereinafter referred to as the vehicle) from the 2nd opposite party dealer paying them a price of Rs.84,364/-, the registration number of the

vehicle being KL 45 L 8000. The vehicle in question is manufactured by the 3rd opposite party whereas the 1st opposite party is statedly another dealer of theirs. The complainant claims to have purchased the vehicle placing reliance on the assurances given by the opposite parties, in respect of warranty, history of flawless performance of the vehicle etc. Allegedly, the vehicle, right from the beginning exhibited complaints of front suspension leakage, back fire during driving and sound from the front brake. Though the 2nd opposite party agreed to rectify the said defect of the vehicle during its first service, they failed to carry out the same. Repeated requests made by the complainant statedly evoked no result. Subsequently, the 2nd opposite party advised the complainant to produce the vehicle before the 1st opposite party dealer for rectifying the complaints. The 1st opposite party also could not cure the defects of the vehicle even during its second service and they advised the complainant to get in touch with the 3rd opposite party manufacturer for addressing his grievances. Though the 3rd opposite party agreed the complainant to collect the vehicle from his house for repairs, they allegedly failed to accomplish their promise. Thereafter, the vehicle developed uneven wear and tear of the front tyre, along with complaint of sliding to the right side while running. While the opposite parties statedly refused to carry out the third service of the vehicle, the complainant was constrained to cause lawyer notice to the opposite parties. Even after third service, the defects of the vehicle remained as such, pertaining to which the opposite parties allegedly, admitted manufacturing defect. The vehicle was thereafter handed over to the 1st opposite party on 03/11/2015 for its fourth service. The 1st opposite party statedly informed the complainant of their inability to cure the defect of the vehicle, it being manufacturing defect. The complainant was again constrained to issue lawyer notice to the opposite parties, which was statedly replied by the 1st opposite party with false ingredients. The vehicle is statedly in possession of the 1st opposite party. The complainant alleges existence of major defect in the vehicle, apart from

deficiency in service on the part of the opposite parties. Hence the complaint. The complainant prays for an order directing the opposite parties to refund to him the cost of the vehicle or replace the same with a new one, apart from other reliefs of compensation and costs.

2) Notice :

The Commission having issued notice to all the opposite parties, the opposite parties filed separate versions.

3) Version of the 1st opposite party :

The 1st opposite party denies any manufacturing defect in the vehicle. They also aver that the complainant had reported to them only minor defects and all of them were duly rectified. The complainant's signature at the foot of the job card is claimed to be an endorsement of their having productively rectified the defects of the vehicle in question. They also aver that the alleged oil leakage from the front and frequent back fire were false. It is also their stance that the wear and tear of the tyre is a normal instance. They also contend that it may also be due to low air pressure, road condition and style of driving. They claim that all the defects of the vehicle were cured and they are entitled to receive Rs.100/- per day as parking fee for the complainant's failure to take the vehicle back from their possession.

4) Version of the 2nd opposite party :

The 2nd opposite party admits the complainant's purchase of the vehicle from them. They also aver that the alleged defects of suspension leakage, back firing during driving and sound from front are false. It is their stance that all the defects of the vehicle reported to them were cured. The 2nd opposite party also states that they closed their operations w.e.f. May 2015 and they ceased to be a dealer of the 3rd opposite party.

5) Version of the 3rd opposite party :

The 3rd opposite party manufacturer denies any privity of contract with the complainant. They admit that the 1st opposite party is their present dealer and also that the 2nd opposite party was their previous dealer as well. The 3rd opposite party admits the complainant's having reported defects relating to oil leakage, back fire etc. to the 1st opposite party while the vehicle was handed over to them for its 2nd service. They deny the complainant's allegations regarding wear and tear of the front tyre. The vehicle is admitted to be with the 1st opposite party since it was entrusted to them on 03/11/2015 by the complainant for its 4th periodical service. They affirm that the vehicle in question remains in perfect condition with the 1st opposite party.

6) Evidence :

The complainant produced documental evidence that had been marked Exts. P1 to P13, apart from affidavit and notes of argument. The report submitted by the Expert Commissioner appointed by the Commission, at the instance of the complainant, is marked Ext. C1. The 3rd opposite party filed objection on Ext. C1 and got another expert report at their instance, which is marked Ext. C2. The 3rd opposite party filed affidavit and notes of argument, as well. The complainant filed objection on Ext. C2 Expert report. No opposite parties did adduce any other evidence.

No notes of argument were filed for the 1st and the 2nd opposite parties. Cost has been seen paid for the 1st opposite party for the failure to file notes of argument, but not seen paid for the 2nd opposite party. The counsel for the complainant, the 1st opposite party and the 3rd opposite party presented their oral arguments, whereas the one for the 2nd opposite party did not.

7) Deliberation of facts and evidence of the case :

The Commission has very carefully examined the facts and evidence of the case. Ext. P1 is attested photocopy of booking form No.926 dtd. 02/02/2015 issued by the 2nd opposite party in favour of the complainant. Ext. P2 is attested photocopy of Cash Receipt Voucher No.3270 for Rs.282/- issued by the 2nd opposite party in favour of the complainant. Ext. P3 is attested photocopy of the Certificate of Registration in respect of vehicle No. KL 45 L 8000. Ext. P4 is attested photocopy of Policy No.2201552312001748 issued by M/s Reliance General Insurance Company Ltd., with validity period from 05/02/15 to 04/02/16. Ext. P5 is copy of Maintenance Schedule Chart – Vespa 125. Ext. P6 is copy of complainant's lawyer notice dtd. 01/07/15. Ext. P7 is Postal Acknowledgment card (1 No.). Ext. P8 is copy of complainant's lawyer notice dtd. 11/11/15. Ext. P9 comprises returned postal envelopes (2 Nos.). Ext. P10 is copy of reply notice dtd. 04/12/15 issued by the 1st opposite party. Ext. P11 is the 1st opposite party's letter dtd. 02/01/2016 addressed to the complainant. Ext. P12 is complainant's letter dtd. 12/01/2016 addressed to the 1st opposite party. Ext. P13 is Postal Acknowledgement card (1 No.).

Ext. C1 is report dtd.19/07/2016 submitted by the 1st Expert Commissioner appointed by the Commission. Ext. C2 is report dtd. 17/10/17 submitted by the 2nd Expert Commissioner appointed by the Commission.

8) Points of deliberation :

- i) Whether the complainant is entitled to receive refund of the price he paid or replacement of the vehicle in question ?
- ii) Whether there is any deficiency in service on the part of all or any of the opposite parties ?
- iii) Whether the complainant is entitled to receive any compensation from the part of the opposite parties ? If so its quantum ?

iv) Costs ?

9) Point No.(i) :

The complainant alleges defect of major nature in the vehicle and prays for its replacement or refund of the cost he paid. The counsel for the complainant during argument placed reliance on the verdict dtd. 03/12/2013 of the Hon'ble National Consumer Disputes Redressal Commission in ***Tata Motors Vs Rajesh Tyagi and another*** towards substantiating this claim of theirs. But a close reading of the said verdict will go to show that the evidence adduced by the complainant therein, unambiguously established the fact that the vehicle therein was produced several times for the same repair within a short span of its purchase, and this in turn helped the Commission affirm the existence of a major defect in the vehicle. In the case at hand, the complainant hardly produced any documents to prove that the vehicle was taken several times to the opposite parties for the purpose of curing the alleged defects. Nor did the complainant take any effort to get the documents, if any, such as Job - card to that effect, produced from the side of the opposite parties, as well. The Hon'ble National Commission in *Tata Motors Vs Rajesh Tyagi* (Supra) ordered curing defects in the vehicle only, and not refund of purchase price or replacement of the vehicle. The case - law which the complainant relies on, therefore, does not squarely cover the facts of the case at hand. Moreover, none of the documents produced by the complainant conclusively evidence the existence of a manufacturing defect in the vehicle in question. Though Ext. C1 & C2 reports submitted by the two Expert Commissioners appointed by the Commission reported defects in the vehicle, both do not affirm any manufacturing defect in the vehicle. In the absence of any expert evidence affirming manufacturing defect in the product, the Commission is not in a position to consider the complainant's prayer for the replacement of the vehicle or refund of the purchase price that he paid. The Hon'ble National Commission

held the same view by its order ***dtd. 29/12/2023 in M/S T & T Motors Ltd., & Anr Vs Pawan Gupta.***

Point No.(i) is found not in favour of the complainant.

10) Point No.(ii) :

Admittedly, all the four periodical services except the first service of the vehicle in question were carried out by the 1st opposite party dealer. The 2nd opposite party dealer's contention regarding their having ceased to be a dealer of the 3rd opposite party manufacturer, is endorsed by the 3rd opposite party manufacturer, as well. In such a context, the opportunity availed by the 2nd opposite party dealer to attend to or to take care of curing the alleged defects of the vehicle in question, was very limited only i.e. to the extent of the vehicle's first periodical service only. Hence the complainant's averments raised in respect of the deficiency in service against the 2nd opposite party relating to productively curing the defects of the vehicle, stand unproved. Resultantly, the 2nd opposite party is exonerated from the liabilities arising from the allegations against them raised in the complaint.

Ext. C1 report was submitted by the Expert Commissioner appointed by the Commission at the instance of the complainant, whereas Ext. C2 report was submitted by the one appointed by the Commission at the instance of the 3rd opposite party manufacturer. Both the reports explicitly affirm that the vehicle in question exhibited the following defects.

- 1) More wear on the right side of the front tyre compared to the left side.
- 2) The Vehicle's sliding towards the right side while running.

The existence of defects in the vehicle affirmed by both the Expert Commissioners, validates and substantiates the complainant's allegations

regarding the same. It also becomes evident that the 1st and the 3rd opposite parties' contentions that the vehicle remains in perfect condition and that they had cured all the defects of the vehicle in question are unfounded and against facts. Neither the 3rd opposite party manufacturer nor the 1st opposite party dealer does dispute the complainant's claim that the vehicle bore a warranty for a period of two years or till it covered a distance of 24,000 km, whichever is earlier. The said defects, as per Ext. C1 Report, were identified by the 1st Expert Commissioner during the period of warranty of the vehicle in question, both in terms of time and distance covered. Admittedly, the vehicle has been in possession of the 1st opposite party since 03/11/15 while it was entrusted to them for its 4th periodical service. Both the 1st opposite party dealer and the 3rd opposite party manufacturer, undeniably, did have the responsibility to cure the said two defects which existed in the vehicle, as was commonly mentioned by both Ext. C1 & C2 reports. The contention of the 3rd opposite party regarding lack of privity of contract between them and the complainant is not relevant with respect to the claims made by the complainant. The opposite parties are one and the same, in so far as any claim made in respect of the defect of the vehicle manufactured by one of them and sold/serviced by the other, is concerned. Both the 1st and the 3rd opposite parties had not cared to productively cure the defects of the vehicle in question which act of these opposite parties is tantamount to deficiency in service on their part.

The first opposite party's contention that the complainant's signature at the foot of the job sheet would express his satisfaction over the work carried out by the opposite parties, does not hold any water. Whenever a vehicle is collected back from the service provider whom the same was entrusted with for repairs, it is a routine procedure without any sort of validation from the part of the signatory / signer to deliver his signature on the job sheet at the space provided for the same. The mere affixture of the vehicle owner's / his agent's

signature there, will not any way prove the fruitfulness of the works effected by the service provider.

Likewise, the 1st opposite party's contention that the wear and tear of the tyre of the vehicle in question is a normal instance, does not appear appropriate in the case at hand. Exts. C1 & C2 reports affirm not a normal and uniform wear and tear, but an uneven one, viz more wear on the right side of the tyre when compared to its left side. Such an uneven wear of the tyre is certainly attributed to a fault of the vehicle, which warrants remedial or corrective intervention. The contention to the contrary raised by the 1st opposite party is indicative of their neglect of consumer rights. The Ext. C2 expert commissioner's report makes a mention about certain scratches seen on the vehicle as well as the bend of its brake levers, relying on which he tries to give an unspoken impression that the defect of the vehicle might be attributed to an accidental damage. We feel that this point needs a thoughtful evaluation. It is pertinent to see that none of the opposite parties who are experienced professionals in the domain capable of noticing such instance by a mere superficial glance of the vehicle, made no such pleading in their respective versions. Hence the indirect, vague and unspoken mention of an otherwise unproven accident's attribution to the defects of the vehicle, does not command any absolute credibility or acceptability. More particularly so, given that the opposite parties had carried out several times, the periodical services of the vehicle in question and that the vehicle in question has been in possession of the 1st opposite party since 03/11/2015.

All considered, in answering Point No.(ii), we find that there is deficiency in service on the part of the 1st and the 3rd opposite parties.

11) Point No.(iii) & (iv) :

As elaborated supra, there is deficiency in service on the part of the 1st and the 3rd opposite parties. The complainant who purchased the vehicle in question paying a handsome sum of Rs.84,364/- would certainly be dissatisfied, if the vehicle suffered such defects of uneven wear and tear & sliding to one side while running. Axiomatically, the misdeeds on the part of the 1st and the 3rd opposite parties might certainly have, as claimed, inflicted agony and hardship on the complainant. The 1st & the 3rd opposite parties have necessarily to compensate the complainant. We are of the considered view that the complainant is entitled to receive a sum of Rs.25,000/- (Rupees Twenty five thousand only) from the 1st and the 3rd opposite parties towards compensation for the agony and hardship he underwent and a sum of Rs.10,000/- (Rupees Ten thousand only) towards costs.

In the result, the 2nd opposite party is exonerated and the complaint is partly allowed against the 1st and the 3rd opposite parties as follows :

I) The 1st and the 3rd opposite parties shall jointly and severally pay the complainant :

- a) a sum of Rs.25,000/- (Rupees Twenty five thousand only) towards compensation for the agony and hardship he underwent, and
- b) a sum of Rs.10,000/- (Rupees Ten thousand only) towards costs,
both with 9 % interest p.a. from the date of filing of the complaint till the date of realisation.

II) Further, the 1st opposite party shall hand over the vehicle in question defect free to the complainant, and if the 1st opposite party is not in a position, by any reason, to cure the defects of the vehicle in question, the vehicle in question shall be handed over to the

complainant along with an additional sum of Rs. 10,000/- (Rupees Ten thousand only) in lieu of repair, and the payment of the said sum of Rs.10,000/- ***shall also be jointly and severally borne by the 1st and the 3rd opposite parties.***

The order shall comprehensively be complied with by the opposite parties, concerned, in 30 days of receipt of a copy of this order.

III) As elaborated supra, the allegations against the 2nd opposite party stood unproved and the 2nd opposite party was accordingly exonerated, as well. But it is seen that the counsel for the 2nd opposite party has not cared to file the notes of argument, despite repeated opportunities and four (04) adjournments (23/08/23, 05/12/23, 17/04/24 & 07/06/24), for the purpose. Nor did he bother to present his oral arguments, as well. Regulation 13 of ***the Consumer Protection (Consumer Commission Procedure) Regulations, 2020 (hereinafter referred to as the Procedure Regulations, 2020)*** reads as follows :

“13. Arguments –

(1) Arguments should be as brief as possible and to the point at issue.

(2) Where a party is represented by a counsel, it shall be mandatory to file a brief of written arguments two days before the matter is fixed for arguments.

(3) In case of default to file briefs, the Consumer Commission shall impose such cost as it deems necessary”.

The conscious failure on the part of the counsel for the 2nd opposite party to file the brief of written arguments, amounts to violation of Regulation 13(2) of the Procedure Regulations, 2020. Every counsel is an officer of the court. Filing brief of written arguments being the absolute and exclusive duty of the counsel, concerned alone, the litigant cannot be made to suffer for the fault or negligence on the part of the counsel. Consequently, the counsel concerned, is liable to pay cost as stipulated under Regulation 13(3) of the Procedure Regulations, 2020. ***Therefore, the counsel of the 2nd opposite party namely Adv. P.N. Harish (Roll No. K/183/09) is directed under Regulation of 13 (3) of the Procedure Regulations, 2020 to pay a sum of Rs.2,500/- (Rupees Two thousand five hundred only) to the Legal Benefit Fund (LBF)*** maintained at the Registry of this Commission, towards the cost for noncompliance of Regulation 13(2) of the Procedure Regulations, 2020. The Registry shall, forthwith, forward a copy of this order, additionally to Adv. P.N. Harish, as well. Adv. P.N. Harish shall pay the said sum of Rs.2,500/- (Rupees Two thousand five hundred only) to LBF within 30 days of receipt of a copy of this order failing which the said sum shall also carry 9% interest p.a. from the date of this order till the date of realisation. Adv. P.N. Harish shall inform this Commission about the payment made to the LBF with relevant receipt, so as to avoid the execution of the same by the Assistant Registrar of this Commission.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 26th day of November 2024.

Sd/-
Sreeja S.
Member

Sd/-
Ram Mohan R
Member

Sd/-
C. T. Sabu
President

Appendix

Complainant's Exhibits :

- Ext. P1 attested photocopy of booking form No.926 dtd. 02/02/2015 issued by the 2nd opposite party in favour of the complainant.
- Ext. P2 attested photocopy of Cash Receipt Voucher No.3270 for Rs.282/- issued by the 2nd opposite party in favour of the complainant.
- Ext. P3 attested photocopy of the Certificate of Registration in respect of vehicle No. KL 45 L 8000.
- Ext. P4 attested photocopy of Policy No.2201552312001748 issued by M/s Reliance General Insurance Company Ltd., with validity period from 05/02/15 to 04/02/16. Ext. P5 copy of Maintenance Schedule Chart – Vespa 125.
- Ext. P6 copy of complainant's lawyer notice dtd. 01/07/15.
- Ext. P7 Postal Acknowledgment card (1 No.).
- Ext. P8 copy of complainant's lawyer notice dtd. 11/11/15.
- Ext. P9 comprises returned postal envelopes (2 Nos.).
- Ext. P10 copy of reply notice dtd. 04/12/15 issued by the 1st opposite party.
- Ext. P11 the 1st opposite party's letter dtd. 02/01/2016 addressed to the complainant.
- Ext. P12 complainant's letter dtd. 12/01/2016 addressed to the 1st opposite party.
- Ext. P13 Postal Acknowledgement card (1 No.).
-
- Ext. C1 report dtd.19/07/2016 submitted by the 1st Expert Commissioner appointed by the Commission.
- Ext. C2 report dtd. 17/10/17 submitted by the 2nd Expert Commissioner appointed by the Commission.

Id/-
Ram Mohan R
Member

//True copy//

Assistant Registrar

