

JOSE PHILIP MAMPILLIL

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v.

M/S. PREMIER AUTOMOBILES LTD. AND ANR.

JANUARY 27, 2004

[S.N. VARIAVA AND H.K. SEMA, JJ.]

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*Consumer Protection Act, 1986—Defect in newly purchased car—At the time of delivery—Complaint with District Consumer Forum—Commissioner appointed by Forum found large number of defects—Direction by District Forum to repair the car free of cost and replacement of engine—State Consumer Forum directed the repair free of cost, while refused replacement of engine—Revision before National Commission dismissed—On appeal, held: Since defects proved to be at the time of delivery, consumer entitled to get the car repaired from the mechanic of his choice, payment whereof to be made by opposite party.*

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Appellant placed order for purchase of a car, manufactured by 1st respondent-the manufacturer, through 2nd respondent-dealer of 1st respondent. At the time of delivery there was defect in the paint and in the piston rings of the engine. Despite the car being sent repeatedly for repair, the defects were not cured. Respondent No.2 had acknowledged the defects.

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Appellant filed complaint before District Consumer Dispute Redressal Forum claiming direction to respondents to replace the car with a new defectless car or to refund total value with 24% interest thereon. District Forum appointed Commissioner who after inspection found large number of defects in the car. Relying on the report of the Commissioner, the Forum directed repair of the car free of cost and replacement of the engine. State Consumer Dispute Redressal Forum held that there was no need to replace the engine, but directed repair of the car free of cost. Revision before National Consumer Disputes Redressal Commission was summarily dismissed. Hence the present appeal.

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Disposing of the appeal, the Court

HELD: 1. From the material on record, it is clear that the car was

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- A defective at the time of delivery. There is no doubt that there were defects in the paint and that the piston rings of the engine had gone. It cannot be said that the piston rings got spoiled after the delivery was taken. The agent of the 1st Respondent, i.e. 2nd respondent, had acknowledged that the piston rings were defective. They would not have so acknowledged unless it was a defect at the time of the delivery. Had this defect occurred by virtue of the Appellant's misusing the car, 2nd Respondent would never have accepted responsibility for repair of the piston rings.

[1097-H; 1098-A, B]

2. It is shameful that a defective car was sought to be sold as a brand new car. It is further regrettable that, instead of acknowledging the defects, the 1st Respondent chose to deny liability and has contested this matter. For this failure in service the Appellant is entitled to get the car repaired from any reputed garage or mechanic, at Kottayam, of his choice. The repair work will then be done and the cost thereof will be paid by the Respondents. The liability to pay the repair cost will be joint and several of both the Respondents. It will not be open to the Respondents to dispute the nature of the work or repairs to be carried out. [1098-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3611 of 2002.

- E From the Judgment and Order dated 7.12.2000 of NCDRC, New Delhi in R.P.No. 888/98.

Appellant-in-person.

- F Siddharth Dave, Senthil Jagadeesan, V. Ramasubramanian, Ramesh Singh, Ms. Bina Gupta, Ms. Vanita Bhargava and Ms. Nina Gupta for the Respondents.

The Judgment of the Court was delivered by

- G S.N. VARIAVA, J. This Appeal has been filed by a party in person, against the Order of the National Consumer Disputes Redressal Commission dated 7 December, 2000

Briefly stated the facts are as follows:

- H The Appellant had placed an order for purchase of a Premier 1.38

Diesel Car manufactured by the 1st Respondent. The full price was paid by the Appellant. The 2nd Respondent was the Dealer of the 1st Respondent at Kottayam. When the Appellant went to take delivery of the car he found defects in the paint of the car. He therefore complained to 2nd Respondent. 2nd Respondent promised to rectify the defects and called him again after some days. The Appellant went after some days. He found that the defects had not been cured. Therefore, he was not willing to take delivery of the car. However, he was persuaded to take delivery of the car on the assurance that all defects would be cured. At this stage, it was also noticed that the piston rings of the engine were defective and that there was heavy leakage of oil. Thereafter the car was repeatedly sent to the dealer for repairs. Each time it was returned claiming that the defects had been cured. However, in fact the defects were not cured.

The Appellant therefore filed a complaint before the District Consumer Disputes Redressal Forum claiming that there should be an order directing the Respondent to take back the car and to replace it with a brand new defectless car or to refund the total value with 24% interest thereon. He also claimed compensation for hardship and mental agony and for costs. The District Forum appointed a Commissioner to inspect the car. The inspection was done in the presence of the 2nd Respondent. The Commissioner notes that the notice had been given to the 1st Respondent. However, nobody from 1st Respondent remained present presumably because their agent was present. The Commissioner in his report has set out that a large number of defects were found in the car. The District Forum acting on this report directed repair of the car free of cost and replacement of the engine.

Both the Appellant as well as the 1st Respondent went in Appeal to the State Consumer Dispute Redressal Forum. The State Consumer Forum dismissed the Appeal of the Appellant. The State Consumer Forum by its Order dated 16th February, 1998, in the Appeal of the 1st Respondent, came to the conclusion that there was no need to replace the engine, but directed repair of the car free of cost.

The Appellant then filed a Revision before the National Consumer Disputes Redressal Commission which has been summarily dismissed by the impugned Order.

We have heard the parties at great length. We have seen the material on record. From the material on record, it is clear that the car was defective

A at the time of delivery. There is no doubt that there were defects in the paint and that the piston rings of the engine had gone. The submission that the piston rings got spoiled after the delivery was taken cannot be accepted. The agent of the 1st Respondent i.e. 2nd Respondent, had acknowledged that the piston rings were defective. They would not have so acknowledged unless it was a defect at the time of the delivery. Had this defect occurred by virtue of the Appellant's misusing the car, 2nd Respondent would never have accepted responsibility for repair of the piston rings.

It must be remembered that these cars were manufactured in Maharashtra. During those days the cars used to be driven down to various places in India by drivers hired by the 1st Respondent. It is a well known fact that many drivers drove the cars rashly and negligently. The piston rings of a diesel engine could only have gone if the car had been run for a long distance without proper lubricants and/or if it was driven rashly. The piston rings of a diesel engine could never have gone in the small amount of running which the Appellant did after he took delivery. If by rash and negligent driving the piston rings of a new car got spoiled, the effect on other parts of the car would also be severe. Therefore, it is quite believable that the suspension would also have got spoilt. This has been so noted by the Commissioner.

E In our view, it is shameful that a defective car was sought to be sold as a brand new car. It is further regrettable that, instead of acknowledging the defects, the 1st Respondent chose to deny liability and has contested this matter. For this failure in service the Appellant is entitled to the following reliefs:

F (a) The Appellant will get the car repaired from any reputed garage or mechanic, at Kottayam, of his choice. A notice will be given by Registered post with acknowledgement due to the 1st and 2nd Respondent intimating them the name and address of the garage where the car has been given for repairs. Within a week of receipt of the notice they shall inspect the car. The repair work will then be done and the cost therefore will be paid by the Respondents. The liability to pay the repair cost will be joint and several of both the Respondents. The 2nd Respondent is being held jointly liable as it was the duty of the 2nd Respondent have refused to deliver a defective car and in any case to have properly repaired the car during the warranty period. It is clarified that the Garage

to whom the car is given will decide what repair work is to be carried out. Undoubtedly the work of complete overhaul of engine and full body paint with necessary tin work on the body must be carried out. It will not be open to the Respondents to dispute the nature of the work or repairs to be carried out. The purpose of granting them inspection is merely to enable them to know that the car has been given to a Garage for repairs and not for the purpose of enabling them to dispute the nature of the work required to be done.

- (b) After the car is got repaired the Appellant shall, before taking delivery of the car, give a notice to the Respondents that the repairs are carried out. They shall within a week of the receipt of that notice inspect the car to ensure that the work claimed to have been done has been done. They shall then forthwith pay the amount claimed by the Garage for repairs. The Appellant shall be entitled to take delivery of the car. It is clarified that the liability to pay is, as stated above, joint and several. In the event of the amount not being paid forthwith, the District Forum shall ensure execution expeditiously and immediately, if necessary, by making 2nd Respondent pay initially. It will then be for the 2nd Respondent to claim reimbursement from the 1st Respondent, if in law they are entitled to do so.
- (c) There is no doubt that the Appellant has had to suffer mental agony in taking delivery of a defective car after having paid for a brand new car and in taking the car again and again to the dealer for repairs. For this mental agony and torture, we direct that the Appellant shall be entitled to a sum of Rs. 40,000/-. The liability to pay this amount shall also be joint and several of both the Respondents. This amount is to be paid within a period of one month from today. The District Forum shall ensure payment, if necessary, by execution.
- (d) 1st Respondent had unnecessarily filed an Appeal before the State Forum. 1st Respondent is therefore responsible for the expense incurred by the Appellant in having to contest the matter all the way to this Court. The Appellant claims that he has spend more than Rs. 3,00,000/- by way of legal expenses. He However, has no proof that he has spent so much amount. He, however, would

A have spent at least Rs. 50,000. We therefore direct the 1st Respondent to pay to the Appellant by way of costs a sum of Rs. 50,000. The same to be paid within one month from today. The District Forum, to ensure payment, if necessary, by execution.

B With these directions the Appeal stands disposed of.

K.K.T.

Appeal disposed of.