A GENERAL MOTORS (INDIA) PRIVATE LIMITED

v.

ASHOK RAMNIK LAL TOLAT & ANR.

(Civil Appeal Nos. 8072-8073 of 2009)

OCTOBER 09, 2014

B

[V. GOPALA GOWDA AND ADARSH KUMAR GOEL, JJ.]

Consumer Protection Act, 1986:

C

s.2(1)(r) – Unfair trade practice – Complaint against appellant – Claiming refund of amount – Courts below found that the appellant had committed unfair trade practice – National Commission apart from ordering on the claim, also D *imposed punitive damages – Held: Finding of unfair trade practice affirmed – But order of punitive damages set aside because such claim was not made by the complainant and the appellant had no notice of such claim.*

s.2(1)(r) – Unfair trade practice – Mere proof of unfair E *labour practice not enough for claim or award of relief unless causing of loss is established.*

Complaint – Alleging unfair trade practice – Scope of – Held: Complaint can cover not only individual but also F *consumers, who are not identifiable conveniently.*

Interpretation of Statutes – Interpretation of Consumer Protection Act – The Act being a social legislation, liberal and purposive interpretation has to be placed on the scheme of the Act avoiding hyper-technical approach.

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Damages – Punitive damages – Award of – Punitive damages are awarded against a conscious wrong unrelated to the actual loss suffered.

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Partly allowing the appeals, the Court A

HELD: 1. The concurrent finding recorded by the Courts below to the effect that "unfair trade practice" was committed by the appellant is affirmed. [Para 14] [24-H; 25-A] B

2.1. The Consumer Protection Act is a piece of social legislation to provide a forum to the consumers against any deficiency in service as well as against any loss or injury arising out of "unfair trade practice". Scope of a complaint can cover not only individual consumer but also consumers who are not identifiable conveniently. However, the complainant has to make an averment and make a claim. [Para 18] [26-D-E] C

2.2. Having regard to the laudable object of the social legislation liberal and purposive interpretation has to be placed on the scheme of the Act avoiding hyper-technical approach. At the same time, fair procedure is hall mark of every legal proceeding and an affected party is entitled to be put to notice of the claim. [Para 18] [26-F-G] D E

Ludhiana Improvement Trust v. Shakti Coop. House Building Society Ltd. **2009 (6) SCR 12 : (2009) 12 SCC 369;** *Colgate Palmolive (India) Ltd. v. MRTP Commission* **2002 (4) Suppl. SCR 219 : (2003) 1 SCC 129;** *Godfrey Phillips India Ltd. v. Ajay Kumar* **2008 (5) SCR 937 : (2008) 4 SCC 504 – relied on.** F

2.3. Mere proof of *"unfair trade practice"* is not enough for claim or award of relief, unless causing of loss is also established, which in the present case has not been established. [Para 19] [29-C] G

2.4. There is neither any averment in the complaint about the suffering of punitive damages by the other consumers nor the appellant was aware that any such H

A **claim is to be met by it. Normally, punitive damages are awarded against a conscious wrong doing unrelated to the actual loss suffered. Such a claim has to be specially pleaded. [Para 20] [29-D-E]**

B **2.5. The National Commission has gone much beyond its jurisdiction in awarding the relief which was neither sought in the complaint nor before the State Commission. Therefore, to this extent, the order of the National Commission cannot be sustained. [Para 20] [29-**
C **F-G]**

Case Law Reference:

2009 (6) SCR 12	**Relied on**	**Para 19**
2002 (4) Suppl. SCR 219	**Relied on**	**Para 19**
D **2008 (5) SCR 937**	**Relied on**	**Para 19**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8072-8073 of 2009.

From the Judgment & Order dated 16.12.2008 of the
E National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 3349 of 2006 and 2858 of 2008.

R.P. Bhatt, Vikram Dhokalia (for Dua Associates) for the Appellant.

F Aparan Jha, Braj K. Mishra for the Respondents.

Caveator-in-person.

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. These appeals have
G been preferred against the order dated 16th December, 2008 of the National Consumer Disputes Redressal Commission (for short "the National Commission") in Revision Petition Nos.3349 of 2006 and 2858 of 2008.

2. The main question raised in these appeals is whether
H in the absence of any prayer made in the complaint and without

evidence of any loss suffered, the award of punitive damages was permissible. Apart from the said main question, the appellant has also called in question the refund ordered and other relief granted in favour of the respondent-complainant.

3. In the complaint, filed before the District Forum, Ahmedabad (Rural) (for short "the District Forum"), the prayer of the respondent-complainant was as follows :

"The complainant, therefore, most respectfully prays :

(a) That this Hon'ble Forum be pleased to hold that the opposite parties (joint and severally) to have practiced unfair trade practice, towards the complainant and direct them (jointly and severally) to remove unfair trade practice, practiced by them against the complainant;

(b) This Hon'ble Forum be pleased to direct the opposite parties (jointly and severally) to remove the deficiencies in their services and negligence towards the complainant.

(c) This Hon'ble Forum be pleased to direct the opposite parties (jointly and severally) to refund the complainant a sum of Rs.14,00,000/- (Rupees Fourteen Lakh) and Rs.1,91,295/- to the complainant along with the 18% interest, from the date of payment to the complainant and the Hon'ble Forum be pleased to direct the opposite parties to forthwith to take back the said vehicle from the complainant, after refunding the complainant's money with interest, as prayed;

(d) This Hon'ble Forum be pleased to direct the opposite parties (jointly and severally) to pay compensation for physical and mental pain, shock, suffering, agonies, hardships, inconveniences and expenses suffered by the

A *complainant, to the tune of Rs.50,000/- (Rupees Fifty Thousand) or as thought fit in the interest of justice, by this Hon'ble Forum;*

(e) The Hon'ble Forum be pleased to direct the B *opposite parties (jointly and severally) to pay Rs.25,000/- to the complainant, as cost of this complaint."*

4. The case of the complainant is that he had passion for driving and dream to visit Leh Ladakh, Jammu & Kashmir and C Nepal by driving a motor car. By surfing the internet, he read advertisement given by the appellant as follows :

"Introducing a world without borders, an SUV to end all SUVs. That's the new Chevrolet Forester. With the Power D *of 120 horses under its borne unique All-Wheels (AWD), it literally puts the four corners of the earth within your easy reach. It won't just get you there. But get you there. But get you there in unmatched comfort and luxury by-road, off-road or no-road."*

E 5. Relying upon the same, he visited the agents of the appellant and was given a book titled "***for a special journey called life***". He was assured that the vehicle offered for sale will realise his dream. The brochure also assured that "***the vehicle in question is an SUV to end all SUVs. And*** F ***..... it will put the four corners of the earth within your each and ..... it won't just get you their every time. But get you're there in unmatched comfort, by road, off-road or no road".*** He was also shown visual presentation of the vehicle and was also given a copy of the VCD. G Accordingly, he purchased the vehicle on 1st May, 2004 for Rs.14 Lakhs and got accessories worth Rs.1,91,295/- fitted and also got the vehicle insured and registered.

6. Thereafter he realised that the vehicle was not fit for "***off-road, no road and dirt road***" driving as represented and had H

defects. Accordingly, he approached the appellant and its dealers who referred to the owner's manual at pages 8-6 column 1 & 3 printed by the Company to the effect :

> *"off-road driving ..... But please keep in mind that AWD Chevrolet is a passenger car and is neither a conventional off-road vehicle nor an all terrain vehicle ..... If the driving through water such as when crossing shallow streams, first check the depth of the water and the water stream bed for firmness and ensure that the bed of stream is flat ..... the water should be shallow enough that it does not reach under carriage."*

Thus he found that the owner's manual was contrary to the assurance in the brochure, internet and the book titled "***for a special journey called life***". He also realised that the vehicle was not **SUV** but a mere passenger car, not fit for "***off-road, no road and dirt road***" driving. He could not realise his dream to drive it to Leh Ladakh, Jammu & Kashmir and Nepal. The action of the appellant was thus, "***unfair trade practice***". He sought permission to remove "***unfair trade practice***" and deficiencies in service and also to refund a sum of Rs.14 Lakhs the price of the vehicle and Rs.1,91,295/- the price of accessories with 18% interest from the date of purchase till the date of payment and also to pay compensation for physical and mental pain shock, suffering, agonies, hardships, inconvenience and expenses suffered by the complainant, to the tune of Rs.50,000/- or as thought fit in the interest of justice and the costs. The District Forum directed refund of Rs.14 Lakhs plus Rs.1,91,295/- towards cost of accessories with interest @ 9% per annum from the date of complaint to the date of payment subject to the return of the vehicle, apart from compensation of Rs.5,000/- for mental agony and Rs.2,000/- as costs of litigation.

7. The said order of the District Forum was challenged by the appellant before the Consumer Disputes Redressal Commission, Gujarat State, Ahmedabad (for short "the State

A Commission"). The State Commission held that the vehicle had no mechanical or manufacturing defect but the advertisement that car was **SUV** amounted to "***unfair trade practice".*** Accordingly, in substitution of the order of the District Forum, the complainant was held entitled to Rs.50,000/- as B compensation which included costs of litigation. But at the same time, the complainant was required to pay Rs.5,000/- towards costs for undeserving claim. The appellant was directed not to describe the vehicle in question as **SUV** in any form of advertisement, website, literature etc. and to make the C correction that it is a passenger car as mentioned in the manual.

8. Accordingly, the appellant complied with the said direction by issuing a disclaimer.

9. The respondent preferred a revision petition against the D Order of the State Commission while the appellant filed a cross revision petition.

10. The National Commission held that the appellant could not be allowed to contest the finding of committing "***unfair trade practice"*** in view of its conduct in voluntarily complying with the E order of the State Commission and filing cross revision without any justification and belatedly. Referring to the material on record, particularly, the undisputed correspondence, the said finding was also affirmed on merits. After referring to the definition of ***"unfair trade practice"*** under Section 2(1) (r) of F the Consumer Protection Act, 1986 (for short "the Act"), it was concluded :

"Keeping in view the above definition of unfair trade practice and the material obtaining on record more G *particularly the representations made and held out by the respondent in their brochures relating to the vehicle in question, the owner's manual as also the clarification rendered by the manufacturer of the vehicle, there can be hardly any doubt that the motor vehicle Chevrolet* H *forester AWD model was not a vehicle of the said*

description in as much as it was not a SUV vehicle. Therefore, the petitioner must have been misled on that score to believe that the vehicle offered for sale was a SUV. This act of the respondent would clearly fall within the mischief of unfair trade practice as envisaged in section 2(r) (supra). We therefore, affirm the findings of the State Commission in this behalf."

11. After recording the above finding the National Commission proceeded to consider the relief to be given. It was held that the State Commission was not justified in reversing the direction of the District Forum once the commission of "***unfair trade practice"*** was established, even as per finding of the State Commission. Accordingly, the National Commission restored the relief given by the District Forum with slight modification as follows :

"Once it is found that respondent has indulged in unfair trade practice which had misled the petitioner to purchase the vehicle in question, in our view, the most appropriate relief to the petitioner would be to reinstate the petitioner to his original position before the purchase of the vehicle viz., refund of the price of the vehicle along with some compensation in that behalf. Keeping in view that the vehicle was used by the petitioner for a period of about one year and it has run approximately 14,000 kms, we consider it appropriate that the respondent should refund a sum of Rs.12,50,000 (Rupees twelve lacs fifty thousand only) to the petitioner subject to the condition that the vehicle in question, without the accessories, which the petitioner got fixed at a cost of Rs.1,91,295/-, is returned to the respondent."

12. The above was not the end of the journey, though the above relief met the claim of the complainant in his complaint. The National Commission proceeded to consider the issue of punitive damages for "***unfair trade practice"*** in selling the said vehicles to about 260 consumers. It was held that though the

A consumers had not approached the National Commission and a period of four years had passed, the appellant should pay punitive damages of Rs.25 lakhs and out of the said amount, a sum of Rs.5 Lakhs be paid to the complainant while the rest be deposited in the "Consumer Welfare Fund" of the Central B Government to be utilized for the benefit and protection of the interests of the consumers generally. Final operative order passed by the National Commission is as follows :

> *"The respondents are hereby directed to pay a sum of* C *Rs.12,50,000/- (Rupees Twelve Lacs Fifty Thousand only) to the petitioner towards price of the vehicle subject to the petitioner returning the vehicle in question without accessories to the respondents. The respondents are hereby called upon to deposit a sum of Rs.25 lacs* D *(Rupess Twenty Five Lacs) as punitive damages with this Commission. Out of the said deposited amount, a sum of Rs.5 lacs (rupees five lacs) shall be paid to the petitioner-complainant and rest of the amount shall be credited to the "Consumer Welfare Fund" of the Central Government to be utilized for the benefit and protection* E *of the interests of the consumers generally. We also award a sum of Rs.50,000/- (rupees fifty thousand) in favour of the complainant to meet his cost of litigation before the three consumer fora. The liability to pay and deposit the amounts shall be joint and several on the* F *respondents. We grant six weeks to the respondents to comply with the directions given herein above. "*

13. We have heard learned counsel for the appellant and the respondent No.1-complainant in-person and perused the G record.

14. The concurrent finding recorded by the District Forum, the State Commission and the National Commission to the effect that "***unfair trade practice***" was committed by the appellant which is based on adequate material on record, does H

not call for any interference by this Court and the same is affirmed .

15. What survives for consideration is the submission of learned senior counsel for the appellant, that there was no claim before the National Commission for the punitive damages nor the appellant had an opportunity to meet such claim and that part of the order needs to be set aside.

16. We find merit in this submission. Vide interim order of this Court dated 17th July, 2009, the operation of the impugned order awarding punitive damages was stayed. Learned counsel for the appellant undertook to deposit the amount awarded in favour of the respondent-complainant towards his claim. The said order was allowed to continue, vide order dated 20.11.2009, with the following modifications :

> *"(i) Respondent No.1 shall return the vehicle to the appellant within a period of four weeks from today. The latter shall arrange for accepting delivery of the vehicle at Ahmedabad.*
>
> *(ii) After return of the vehicle to the appellant, respondent No.1 shall be entitled to withdraw the amount of Rs.12,50,000/- together with litigation cost deposited by the appellant before the District Forum in terms of order of this Court dated 17th July, 2009 subject to his furnishing security to the satisfaction of the District Forum.*
>
> *(iii) It will be open to the appellant to sell the vehicle and keep the sale proceeds in a separate interest bearing account. Respondent No.1 shall cooperate with the appellant by signing the documents necessary for selling the vehicle."*

17. We proceed to deal with the issue of correctness of finding recorded by National Commission for awarding punitive damages. Before doing so, we may notice that the respondent-

A complainant appearing in-person, in his written submissions has raised various questions, including the question that the appellant should be asked to account for the proceeds of the vehicles sold by it. Admittedly, the vehicle in question has been ordered to be handed back to the appellant against which B respondent-complainant has no claim. Thus, the plea raised is without any merit. The other issue raised for further punitive damages of Rs.100 crores and also damages for dragging him in this Court, merits no consideration being beyond the claim of the complainant in the complaint filed by him. Moreover, no C litigant can be punished by way of punitive damages for merely approaching this Court, unless its case is found to be frivolous.

18. The Act is a piece of social legislation to provide a forum to the consumers who are taken for a ride by suppliers of goods and services. The redress is provided to a consumer D against any deficiency in service as well as against any loss or injury arising out of "***unfair trade practice***". By later amendment, scope of a complaint can cover not only individual consumer but also consumers who are not identifiable conveniently. However, the complainant has to make an E averment and make a claim. Section 12 of the Act permits not only a complaint by a consumer to whom goods are sold or delivered but also any recognised consumer association or one or more consumers on behalf of and for the benefit of all consumers but still, a case has to be made out and the affected F party heard on such issue. We are conscious that having regard to the laudable object of the social legislation to protect the interest of consumers, liberal and purposive interpretation has to be placed on the scheme of the Act avoiding hyper technical approach. At the same time, fair procedure is hall mark of every G legal proceeding and an affected party is entitled to be put to notice of the claim with such affected party has to meet.

19. We may at this stage refer to the scheme of the Act with regard to claim against "***unfair trade practice***". The background and scope of the provision was dealt with H

Ludhiana Improvement Trust v. Shakti Coop. House Building Society Ltd[1]. as follows :

"18. Prior to the substitution of clause (r) in sub-section (1) of Section 2 of he Act with retrospective effect from 18-6-1993, there was no separate definition of the term "unfair trade practice" and the said term was given the same meaning as in Section 36-A of the Monopolies and Restrictive Trade Practices Act, 1969 (for short "the MRTP Act"). But now after the said amendment, the definition of the term has been specifically provided in Section 2(1)(r), although the definition is practically a verbatim reproduction of the definition in Section 36-A of the MRTP Act.

19. The basic ingredients of "unfair trade practice" are:

(i) it must be a trade practice;

(ii) the trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or for the provision of any service; and

(iii) the trade practice adopts any unfair method or unfair or deceptive practice including any of the practices enumerated in clauses (1) to (6) of Section 2(1)(r) of the Act.

Therefore, any trade practice which is adopted for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, by adopting any unfair method or unfair or deceptive practice has to be treated as "unfair trade practice" for which an action under the provisions of the Act would lie, provided, the complainant is able to establish that he is a

1. (2009) 12 SCC 369.

A *consumer within the meaning of Section 2(1)(d) of the Act."*

In ***Colgate Palmolive (India) Ltd.*** **v.** ***MRTP Commission***[2] this Court laid down five ingredients which have to be established before a trade practice can be said to be an B ***"unfair trade practice"***. The Court laid the ingredients in the following manner:

"16. A bare perusal of the aforementioned provision would clearly indicate that the following five ingredients are C necessary to constitute an unfair trade practice:

1. *There must be a trade practice [within the meaning of Section 2(u) of the Monopolies and Restrictive Trade Practices Act].*

D

2. *The trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or the provision of any services.*

3. *The trade practice should fall within the ambit of* E *one or more of the categories enumerated in clauses (1) to (5) of Section 36-A.*

4. *The trade practice should cause loss or injury to the consumers of goods or services.*

F

5. *The trade practice under clause (1) should involve making a 'statement' whether orally or in writing or by visible representation."*

Again in ***Godfrey Phillips India Ltd. v. Ajay Kumar***[3]**,** it G was observed :

"18. So far as Direction (iii) is concerned, it is to be noted that there was no prayer for any compensation. There

2. (2003) 1 SCC 129.

H 3. (2008) 4 SCC 504.

was no allegation that the complainant had suffered any loss. Compensation can be granted only in terms of Section 14(1)(d) of the Act. Clause (d) contemplates award of compensation to the consumer for any loss or injury suffered due to negligence of the opposite party. In the present case there was no allegation or material placed on record to show negligence."

Thus, mere proof of ***"unfair trade practice"*** is not enough for claim or award of relief unless causing of loss is also established which in the present case has not been established.

20. We have already set out the relief sought in the complaint. Neither there is any averment in the complaint about the suffering of punitive damages by the other consumers nor the appellant was aware that any such claim is to be met by it. Normally, punitive damages are awarded against a conscious wrong doing unrelated to the actual loss suffered. Such a claim has to be specially pleaded. The respondent complainant was satisfied with the order of the District Forum and did not approach the State Commission. He only approached the National Commission after the State Commission set aside the relief granted by the District Forum. The National Commission in exercise of revisional jurisdiction was only concerned about the correctness or otherwise of the order of the State Commission setting aside the relief given by the District Forum and to pass such order as the State Commission ought to have passed. However, the National Commission has gone much beyond its jurisdiction in awarding the relief which was neither sought in the complaint nor before the State Commission. We are thus, of the view that to this extent the order of the National Commission cannot be sustained. We make it clear that we have not gone into the merits of the direction but the aspect that in absence of such a claim being before the National Commission and the appellant having no notice of such a claim, the said order is contrary to principles of fair procedure and

A natural justice. We also make it clear that this order will not stand in the way of any aggrieved party raising a claim before an appropriate forum in accordance with law.

21. Accordingly we allow these appeals and set aside the B order of the National Commission to the extent of award of punitive damages.

Kalpana K. Tripathy Appeals partly allowed.