

Case No. 89

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,
NEW DELHI

REVISION PETITION No.367 OF 1998
(From the order dated 20.2.98 in S.C. Case No. 477/A/97 of
the State Commission, West Bengal)
13th February, 2003

Tata Finance Limited

Petitioner

Vs.

Marjan Hossan and Ors.

Respondents

BEFORE:

HON'BLE MR JUSTICE D P WADHWA, PRESIDENT
HON'BLE MR JUSTICE J K MEHRA, MEMBER
MRS RAJYALAKSHMI RAO, MEMBER
MR B K TAIMNI, MEMBER
HON'BLE MR JUSTICE K S GUPTA, MEMBER

Hire purchase agreement - hirer not a consumer - respossession owing to the default would not contitute deficiency in service - whether in cases of hire purchase consumer form agreement would have jurisdiction - question pending adjudication in the Supreme court.

For the Petitioner : Mr Sandeep Narain & Ms. Anjali Jha, Advocates

For the Respondent : Mr G V Anand, Advocate

ORDER

Petitioner was the Opposite Party before the District Forum where the Complainant Marjan Hossan had filed a complaint alleging deficiency on the part of the Petitioner and Respondent Nos. 2 & 4.

Brief facts of the case are that the Complainant after obtaining assistance under the Prime Minister's Rozgar Yojna entered into a Hire Purchase agreement with the Petitioner for financing the balance cost of a Tata Truck Hire Purchase Agreement laid down the terms of release of funds, deposit of instalments, consequences of delayed/ non payment, status of the Complainant viz-a-viz truck etc. Truck was purchased on 26.9.95 which met with an accident on 24.5.96 allegedly disrupting the repayment schedule, consequent to which as per terms of the Hire Purchase Agreement, truck was re-possessed by the Petitioner which was sold for Rs.2.5 lakhs on 14.7.96. Complainant filed a complaint in 1996 praying for following reliefs:-

Refund of Money .Rs.1,72,400.00
With compensation of Rs. 50,000 or
Returning of vehicle appearing No. WB 57/2074 in running condition

The district Forum after hearing the parties allowed his complaint with several directions inter alia directing return of truck after calculating the total amount due as on June, 1997, then deducting the total amount paid by the Complainant to the Petitioner plus amount received from the Insurance Company by the Petitioner. 70% of the amount thus arrived at will be paid by the Complainant within one month of the order and the remainder amount was to be paid by September, 1997. On an appeal filed by the Complainant, the State Commission modified the order to the extent that amount payable to the Petitioner was to be worked out till 23.5.1996 and the amount thus worked out as per directions of the District Forum and as modified by the State Commission, was to be payable in twelve equal monthly instalments by the Complainant. If the truck at the time of return was not in workable condition, then the Petitioner was to repay the amount collected from the Complainant along with interest @ 18% p.a. It is against the order that this Revision Petition has been filed by the Petitioner.

Two main points have been raised by the learned Counsel for the Petitioner. First, the Complainant is not a consumer as he has not hired his 'services nor he has purchased goods from him and secondly, what the Petitioner did was as per the terms of Hire Purchase Agreement. Thus, there has been no deficiency on his part. For this he relied upon the judgement of this Commission in Manager, St. Mary's Hire Purchase (P) Ltd., Vs. N A Jose - III (1995) CPJ 58 (NC). It was also his case that the said truck stood disposed off on 14.7.1996 for Rs.2.5 lakhs. Even after adjusting this amount, there is still an outstanding amount against the Complainant. Since the Petitioner here acted as per terms of the Hire Purchase Agreement no deficiency can be attributed to him. Both the lower forums failed to appreciate the point of fact and law. Petition needs to be allowed and the complaint is to be dismissed. On the other hand, argument of the Ld. Counsel for the 1st Respondent/Complainant is that he is very much a consumer within the meaning of Section 2(1) (d) of the Consumer Protection Act, 1986. The Truck was purchased for the purposes of his own livelihood and not for commercial purposes. This is a question of fact which is to be decided by the Consumer Forum. The terms of the agreement on which the Petitioner is relying are against the principles of natural justice hence cannot be sustained.

We have heard the arguments and perused the material on record. Basic facts are not disputed about the factum of Hire Purchase Agreement. Delay in payments, before the accident of the truck and default in payments of instalments to the Petitioner after the truck met with accident are not denied by the Respondent/Complainant. It

is also not disputed that the Hire Purchase Agreement does provide for re-possession of truck without any notice. What the Id. Counsel for the Complainant wants us to do is to go behind the Hire Purchase Agreement as according to him many of the terms are violative of principles of natural justice. This Commission is of the view that the parties are bound by the terms of the Agreement between the parties. If terms are seen to be violative of any law/statute Complainant shall have to go to some other forum for such a relief. Since there is no challenge of violation of any terms of Agreement and admitted position is that action taken by the Petitioner to repossess the vehicle was as per terms of Agreement, in these circumstances, no deficiency can be alleged against the Petitioner. This Commission had held the same view in the order cited earlier wherein this Commission had held -

“The exercise of right by the Appellant herein in accordance with the terms and conditions of the Hire Purchase Agreement cannot be considered as any negligence on the part of the Opposite Party and the Appellant cannot also be branded as being guilty of any deficiency in service”

On the point of the Complainant being a consumer, we see that as per clause 6 of the conditions' attached to the Agreement, the hirer (in this the Complainant) held the vehicle as a “Bailee” of the Owners, and was not to have any proprietary right or interest as purchaser. In view of this, he remained in the eyes of law what the Agreement stated, a ‘hirer’ of the truck and not a ‘purchaser’ of truck since he was not a purchaser of the truck as per law on the subject. It cannot be said that the Complainant had hired the ‘services’ of the Petitioner to fall within the purview of ‘Consumer’ as defined in the Act.

Before parting we would like to refer to our orders dated 23.9.2002 in the case wherein the Learned Counsel for the Petitioner on instructions offered to pay Rs.76,000/- i.e. the amount paid initially by the Complainant to the Petitioner at the time of entering into Hire Purchase Agreement as per its terms. But, the Counsel for the Complainant was not prepared to accept this amount as according to him his client had paid much more. Same was the stand of the Id. Counsel for the Complainant on the final date of hearing.

On all the grounds disclosed earlier, we find that both the lower forums went wrong in their appreciation of facts and law involved in the case. Hence, we are unable to sustain the orders passed by them, which are set aside. The complaint filed by the Complainant is dismissed. The Complainant shall be free to pursue his remedy before any other forum, if so advised.