

- aforesaid scheme and vide certificate (Annexure C-3), warranty of the subject car was extended upto 11.6.2022 applicable to Pan India. On 13.8.2021, complainants sent the subject car to OP-1 for some repair and maintenance, being covered under warranty, and the same was returned back on 28.8.2021. Vide invoice dated 28.8.2011 (Annexure C-4), OP-1 charged an amount of ₹76,465/- for the repair and service of the subject car w.e.f. 13.8.2021 to 28.8.2021. However, it came to the notice of the complainants that parts like tensioner, roller bearing etc. (each part costing more than ₹5,000/-) were replaced at the time of maintenance by the OPs, which were also covered under the extended warranty scheme till 11.6.2022, and that the OPs had charged an amount of ₹40,000/- for the parts which were otherwise covered under the terms and conditions (Annexure C-5) of the extended warranty. Thereafter on 16.11.2021, complainants sent emails to OPs seeking clarification and the OPs had replied that tensioner, bearing and V belt were not covered under the extended warranty scheme as a result of which the cost of the aforesaid parts was charged from the complainants. The complainants had also sent a legal notice dated 12.11.2021 (Annexure C-6) on the OPs, but, with no success. In this manner, the aforesaid act of the OPs amount to deficiency in service and unfair trade practice. OPs were requested several times to admit the claim, but, with no result. Hence, the present consumer complaint.
- b. OP-1 did not turn up before this Commission, despite proper service, hence it was proceeded against ex-parte vide order dated 2.8.2022.
 - c. OP-2 resisted the consumer complaint and filed its written version, inter alia, taking preliminary objections of maintainability, cause of action, jurisdiction and concealment of facts. It is alleged that the complainants are not covered under the definition of a consumer as the subject car is in the name of M/s Aam Aan Kay Gases Pvt. Ltd. and even otherwise, no case is made out against OP-2 since the subject car was only repaired by it whereas the complainants had purchased the extended warranty from the company and not from the answering OP. It is further alleged that, in fact, the dispute is between the complainants and OP-1 and the name of OP-2 be deleted since there is no deficiency in service or unfair trade practice on the part of the answering OP. On merits, the facts as stated in the preliminary objections have been reiterated. The cause of action set up by the complainants is denied. The consumer complaint is sought to be contested.
 - d. Despite grant of sufficient opportunity, rejoinder was not filed by the complainants to rebut the stand of the OP.
2. In order to prove their case, contesting parties have tendered/proved their evidence by way of respective affidavits and supporting documents.
 3. We have heard the learned counsel for the contesting parties and also gone through the file carefully.
 - i. At the very outset, it may be observed that when it is an admitted case of the parties that complainant No.2 is Director of complainant No.1 and OP-2 had issued the extended warranty certificate (Annexure C-3) to the complainants, which was valid w.e.f. 12.6.2019 to 11.6.2022, after receiving an amount of ₹85,026/- vide receipt dated 29.3.2019 (Annexure C-2), the case is reduced to a narrow compass as it is to be determined if there is any deficiency in service or unfair trade practice on the part of OPs in charging the complainants for the repair during the warranty period and the complainants are entitled to the reliefs prayed for in the consumer complaint, as is the case of the complainants, or if the complainants have no cause of action against OP-2 and the consumer complaint is liable to be dismissed against OP-2, as is its defence.
 - ii. Perusal of Annexure C-2 indicates that the complainants had paid an amount of ₹85,026/- to OP-2 for purchase of the extended warranty. Annexure C-3 is the copy of the extended warranty certificate issued by OP-2 which was valid w.e.f 12.6.2019 to 11.6.2022. Annexure C-5 is the copy of Standard Extended Warranty Terms and conditions which clearly indicate the list of parts included/ excluded under the warranty scheme/certificate. Annexure C-4 is the tax invoice dated 28.8.2021 which clearly indicates that OP-1 had charged an amount of ₹76,465/- from the complainants for the repair of the subject car.
 - iii. As per the case of the complainants, OP-1 has charged the cost of the parts which were otherwise covered under the extended warranty scheme and in this manner, complainants are entitled for an amount of ₹40,000/- which OPs had wrongly charged. On behalf of complainants, our attention has been drawn to the tax invoice (Annexure C-4) issued by OP-1 in which details of the parts replaced/ repaired have been given. At Sr.No.11 "Tensioning pulley remove + reinstall" has been shown with cost of ₹2,628.45. Similarly, at Sr.No.20 "Tensioner" ₹6,319.40, Sr.No.23 "Tensioner" ₹6,339.35 and Sr.No.24 to 26 "Roller" with different costs have been shown. It is

prayed that the total amount paid by the complainants for the said parts be refunded to them, being covered under the warranty.

- iv. On the other hand, OP-2 has emphasized that, in fact, except the parts shown at Sr.No.20 & 23, the other parts are not covered under the warranty.
- v. Perusal of the Audi Standard Extended Warranty terms and conditions (Annexure C-5) clearly indicates that the belt tensioners are covered under the warranty and except the belt tensioner, the other parts claimed by the complainants i.e. tensioner pulley, rollers are not covered under the warranty. Even otherwise, rollers are the part over which the belt tensioners move which are otherwise not part of the belt tensioner that is covered under the terms and conditions of extended warranty. Hence, it is clear that OP-1 has wrongly charged the cost of the parts i.e. "tensioner" (at Sr.No.20 & 23 of the tax invoice) to the tune of ₹6319.40 & 6339.35 totaling to ₹12,658.75 (rounded off to ₹12,659/-) despite knowing that the same were covered under the extended warranty whereas the other parts, as discussed above, were not covered under the same.
- vi. In view of the aforesaid discussion, it is safe to hold that the complainants have successfully proved the cause of action set up in the consumer complaint and the present consumer complaint deserves to succeed.

4. In the light of the aforesaid discussion, the present consumer complaint succeeds, the same is hereby partly allowed and OPs are directed as under :-

- i. to pay ₹12,659/- to the complainants alongwith interest @ 9% per annum w.e.f. the date of invoice i.e. 28.8.2021 onwards
- ii. to pay ₹7,000/- to the complainants as compensation for causing mental agony and harassment;
- iii. to pay ₹5,000/- to the complainants as costs of litigation.

5. This order be complied with by the OPs within forty five days from the date of receipt of its certified copy, failing which, the payable amounts, mentioned at Sr.No.(i) & (ii) above, shall carry interest @ 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr.No. (iii) above.

6. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

7. Certified copies of this order be sent to the parties free of charge. The file be consigned.

Announced

01/12/2023

hg

Sd/-

[Pawanjit Singh]

President

Sd/-

[Surjeet Kaur]

Member