

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/15/116
(Date of Filing : 13 Feb 2015)**

1. THOMAS N.V

1/311,NAMMAANALIL HOUSE THURUTHY.PO
THURUTHY PERUMBAVOOR ERNAKULAM

.....Complainant(s)

Versus

1. ROYAL ENFIELD MOTORS LTD

TIRUVOTTIYUR,CHENNAI-600019 REP.BY ITS
MANAGING DIRECTOR

2. ST.MARYS MOTORS

RAJAJI JN,CHITTOOR ROAD ERNAKULAM,KOCHI-
682035 REP.BY ITS MANAGER

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 05 Oct 2023

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 5th day of October 2023

Filed on: 13/02/2015

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

C.C No. 116 /2015

COMPLAINANT

Thomas N.V , S/o Varghese, 1/311. Nammanalil House, Thuruthy P.O., Thuruthy Perumbavoor,
Ernakulam District

(Rep. by Adv. S. Ranjith, SR Associates, 1st Floor, Shivadas Towers, Opp. Mymoon Theatrem Chittoor Road, Ernakulam – 18)

THE OPPOSITE PARTIES

1. Royal Enfield Motors Ltd Tiruvottiyur High Road, Tiruvottiyur, Chennai - 600 019. Rep by its Managing Director
2. St. Marys Motors, Rajaji Junction, Chittoor Road, Ernakulam, Kochin-682035. Rep by its Manager.

(OP No. 1&2 Rep. by Adv. Joson Manavalan, M/s. Menon & Pai, I.S. Press Road, Ernakulam, Kochi 682018)

FINAL ORDER

D.B.Binu, President:

1. A brief statement of facts of this complaint is as stated below:

The complaint is filed under Section 12 (1) of the Consumer Protection Act, 1986. The complainant booked a Royal Enfield motorcycle of Model "Classic 350 CC" on 13.07.2013 by paying an advance of Rs. 5000/- to the 2nd Opposite Party. Despite multiple requests, the 2nd Opposite Party did not deliver the booked motorcycle. They suggested changing the booking to an Enfield Bullet 500 CC, promising delivery in 2 weeks. Relying on this assurance, the complainant changed the booking.

However, even after waiting for a year, the complainant received the Classic 350 CC Bullet instead of the promised Enfield Bullet Standard 500 CC. The complainant paid the full amount for the vehicle on 27.11.2014. The invoice raised on 01.12.2014 was for Rs. 1,45,475.00/-. The motorcycle was finally delivered on 03.12.2014 but had manufacturing defects. It broke down on the way home, and subsequent repairs and servicing did not resolve the issues, particularly related to the gearbox.

The complainant faced recurring breakdowns and incurred expenses for repairs and lost income due to the motorcycle's unreliability. The 2nd Opposite Party had assured the complainant that the Enfield Bullet Standard 500 CC was of superior quality, and the complainant purchased it based on this assurance.

Despite the 1st periodic service and repairs, the motorcycle continued to malfunction. The complainant alleges that there are serious manufacturing defects rendering the vehicle unsuitable for use. The 1st Opposite Party, the manufacturer, and the 2nd Opposite Party, the authorized dealer, are accused of unfair trade practices and deficiency in service.

The complainant is seeking the following remedies:

1. A direction for the 1st Opposite Party to refund Rs.1,60,467, which covers the cost of the vehicle, registration, tax, and insurance charges. Alternatively, the complainant wishes to receive a brand-new Enfield Bullet Standard 500 CC motorcycle without any defects.
2. A direction for both Opposite Parties to compensate the complainant with Rs.20,000 for the inconvenience caused due to their alleged illegal actions.

In addition to these remedies, the complainant also requests the reimbursement of the cost of the legal proceedings.

2). Notice

The Commission issued notices to both opposite parties, which were duly served. Yet, within the prescribed time frame, neither of the opposite parties provided their versions.

3) Evidence

The complainant had produced proof affidavit and 6 documents that were marked as Exhibits A-1 to A-6.

Exhibit A1: Copy of the order booking form dated 13.07.2013.

Exhibit A2: Copy of the receipt issued by the 2nd Opp. Party for Rs. 1,49,000/- dated 27.11.2014.

Exhibit A3: Copy of the Tax invoice dated 01.12.2014.

Exhibit A4: Copy of the Insurance of the Vehicle dated 01.12.2014.

Exhibit A5: Copy of the cash bill for Rs. 200/- dated 04.12.2014.

Exhibit A6: copy of the receipt evidencing the payment of road tax dated 05.12.2014

4) The main points to be analysed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant?
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

5) The issues mentioned above are considered together and are answered as follows:

As per Section 2 (1) (d) of the Consumer Protection Act,1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. The complainant had produced a Copy of the receipt issued by the 2nd Opp. Party for Rs. 1,49,000/- dated 27.11.

2014 (**EXHIBIT A-2**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986 (Point No. i) goes against the opposite parties.

The complainant has approached the Commission, requesting a direction for the opposite parties to either refund Rs. 1,60,467/-, representing the vehicle's value, or provide a new replacement vehicle. Additionally, the complainant seeks Rs. 20,000/- as compensation for mental distress and other related damages.

The learned counsel for the Complainant submitted that the Complainant booked a "Royal Enfield Classic 350 CC" on 13.07.2013 with the 2nd Opposite Party and paid an advance of Rs. 5,000. This transaction is confirmed by **Exhibit A1**. Despite several requests, the 2nd Opposite Party failed to deliver the booked vehicle. Instead, they proposed changing the booking to an "Enfield Bullet 500 CC," promising delivery in two weeks. Relying on this assurance, the complainant modified the booking to an "Enfield Bullet Standard 500 CC" and subsequently waited for a year. The complainant then settled the full vehicle amount of Rs. 1,49,000/- on 27.11.2014, as shown in **Exhibit A2**. An invoice amounting to Rs. 1,45,475/- was issued on 01.12.2014, documented in Exhibit A3, and the vehicle was finally handed over on 03.12.2014.

Soon after the acquisition, the vehicle revealed manufacturing defects. This was immediately evident when the vehicle malfunctioned during its initial journey from the showroom to the complainant's residence. This led the complainant to consult a service center, which advised taking the vehicle to the 2nd Opposite Party's showroom. Despite this maintenance, primarily focused on the gearbox and clutch, the vehicle's problems persisted. **Exhibit A5** substantiates this claim. Furthermore, even after the first comprehensive service and repairs on 12.12.2014, the vehicle remained inconsistent and faced multiple breakdowns at different locations.

These breakdowns not only forced the complainant to bear significant repair costs but also resulted in a loss of income, as the vehicle was frequently non-functional. The 2nd Opposite Party had misled the complainant, suggesting that the "Enfield Bullet Standard 500 CC" was superior and of higher quality than its counterparts. However, persistent gearbox issues rendered the vehicle unsuitable for the complainant's needs.

It was highlighted that the 1st Opposite Party, being the manufacturer, assured the complainant of the vehicle's quality. In contrast, the 2nd Opposite Party, an authorized dealer, echoed these claims. This collective behavior was labelled as unfair trade practices and a deficiency in service.

To remedy this situation, the complainant had formally notified the Opposite Parties but received no response. Consequently, the complainant seeks either a refund amounting to Rs. 1,60,467/-, inclusive of the vehicle's cost, registration, tax, and insurance, or a defect-free replacement vehicle. In addition to this, the complainant demands Rs. 20,000/- in damages for the mental distress and inconvenience caused by the Opposite Parties' negligent actions. The complainant emphasizes that without the stipulated relief, they would inevitably endure significant injury, hardship, and loss.

The Opp. Parties received the notices but did not file their written versions before the commission within the statutory period. However, on 04-07-2023, the first OP presented an argument note to the commission.

Argument note submitted by 1st opposite party

The complainant alleges that he purchased a motorcycle (Classic 500CC) from the 1st opposite party via the 2nd opposite party, which turned out to have manufacturing defects. He claims that the bike malfunctioned soon after it was taken from the showroom, especially showing issues with the gearbox and clutch. The complainant is seeking a refund of Rs. 160467/- or a replacement for the defective bike and an additional Rs. 20,000/- as compensation for mental distress.

The 1st opposite party refuted these allegations, emphasizing that their warranty only covers the replacement or repair of a defective part, not the entire vehicle. They argue that the complainant hasn't provided substantial evidence to back up his claims, emphasizing that the burden of proof lies with the complainant, as supported by various legal precedents. They also mention that the warranty only provides for the replacement of the defective part, not the entire vehicle.

The 1st opposite party contends that the complainant has not proven the presence of a manufacturing defect and has not employed any expert evidence to support his claims. They suggest that the complaint appears experimental, aimed solely at troubling the 1st opposite party, and thus request the complaint be dismissed with compensatory costs in their favour.

We cannot take into account the arguments presented by the 1st opposite party in their argument note due to the absence of formal pleadings from their side. The 1st opposite party hasn't provided either a version or an affidavit.

The opposite parties' conscious failure to file their written versions in spite of having received the Commission's notice to that effect amounts to an admission of the allegations levelled against them. Here, the case of the complainant stands unchallenged by the opposite parties. We have no reason to disbelieve the words of the complainant as against the opposite parties. **The Hon'ble National Commission held a similar stance in its order dated 2017 (4) CPR page 590 (NC).**

The complainant has provided substantial evidence in the form of documents (Exhibits A1 to A6) that corroborate the sequence of events leading to the purchase of the vehicle, its defects, and the monetary transactions involved. This evidence has gone unchallenged by the Opposite Parties.

The Opposite Parties, despite receiving notices, did not contest or provide any counter to the allegations within the stipulated time frame. Their failure to respond is tantamount to an admission of the allegations made by the complainant.

Nachiket P. Shirgaonkar v/s Pandit Automotive Ltd. & Another, Revision Petition No. 3519 of 2006 in Appeal No. 1953 of 2005, Decided On, 25 February 2008, At, National Consumer Disputes Redressal Commission. AIR 2008 (NOC)2260(NCC)

“In this case, from day one onwards the vehicle was found to be defective which was admitted by the dealer himself through his letters. Naturally, encountered with these problems the consumer must have been shell shocked compelling him to knock at the doors of the Consumer Forum. Even before the Consumer Forum in the written submissions filed by OP 1, there is a clear admission of the manufacturing defects. Hence, we are convinced that the vehicle did suffer from manufacturing defects. This

is a clear case of res ipsa loquitur i.e., facts speak themselves hence there is no need to refer the vehicle to a third party for giving an opinion.”

The Hon’ble National Commission, in the case mentioned, ruled that if a vehicle displays defects from the outset and the dealer acknowledges these defects, it conclusively points to manufacturing flaws. The legal doctrine of res ipsa loquitur, which translates to "the thing speaks for itself," is pertinent here. This principle implies that the mere occurrence of an injury or defect, especially when coupled with the Opposite Party's inaction, inherently supports the allegation of negligence.

The Opposite Parties not only provided a faulty vehicle but also failed to remedy the situation, causing further inconvenience to the complainant. Instead of addressing the concerns raised, the 2nd Opposite Party misled the complainant into changing his booking under false assurances.

Promising a high-quality product and then delivering a faulty one without taking responsibility constitutes an unfair trade practice. The 2nd Opposite Party's failure to deliver the initially booked model and then the delivery of a defective motorcycle, combined with their false assurances, clearly indicates deceitful business practices.

The complainant faced recurring breakdowns and had to bear the brunt of the costs of repairs. The continual malfunctioning of the motorcycle also led to a loss of income for the complainant, adding to the mental and financial distress.

The Consumer Protection Act, 1986, is intended to provide consumers with a way to address grievances against unfair trade practices and deficiencies in service. In this case, the Opposite Parties have clearly violated the rights of the complainant as a consumer.

The aforementioned case law proves a precedent that when there is clear evidence of manufacturing defects and the Opposite Party has not contested the allegations despite notices served, the vehicle is presumed to be defective. Here, the complainant has provided relevant documents as evidence. Furthermore, the complainant has detailed the problems faced with the vehicle, indicating that the issues started immediately after the purchase. The documents filed by the complainant confirmed that the payments were made, the vehicle was purchased, and there were issues from the very beginning.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite parties are liable to compensate the complainant.

We find the issue Nos. (ii) and (iv) are also found in favour of the complainant for the serious deficiency in service and unfair trade practices that happened on the side of the opposite parties. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss... etc. due to the negligence on the part of the opposite parties.

Hence the prayer is partly allowed as follows:

- I. The Opposite Parties shall refund the amount of Rs.1,60,467/- (which includes the cost of the vehicle, registration, tax, and insurance charges) to the complainant within one month of receipt of a copy of this order

- II. Both the 1st and 2nd Opposite Parties are directed to pay compensation of Rs.10,000/- to the complainant for the mental agony and hardship caused due to their unfair trade practices and deficiency in service.
- III. The Opposite Parties shall also pay the complainant Rs. 5, 000/- towards the cost of the proceedings.

The Opposite Parties 1 and 2 are liable for the above-mentioned directions which shall be complied with by the Opposite Parties within 30 days from the date of the receipt of a copy of this order. Failing which the amount ordered vide (i) and (ii) above shall attract interest @9.5% from the date of complaint till the date of realization.

Pronounced in the Open Commission on this the 5th day of October, 2023

Sd/-

D.B.Binu, President

Sd/-

V.Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded by Order

Assistant Registrar

Appendix

Complainant's evidence

Exhibit A1: Copy of the order booking form dated 13.07.2013.

Exhibit A2: Copy of the receipt issued by the 2nd Opp. Party for Rs. 1,49,000/- dated 27.11.2014.

Exhibit A3: Copy of the Tax invoice dated 01.12.2014.

Exhibit A4: Copy of the Insurance of the Vehicle dated 01.12.2014.

Exhibit A5: Copy of the cash bill for Rs. 200/- dated 04.12.2014.

Exhibit A6: copy of the receipt evidencing the payment of road tax dated 05.12.2014

Opposite parties evidence

Nil

Despatch date:

By hand: By post

kp/

CC No. 116/2015

Order Date: 05/10/2023Registrar

**[HON'BLE MR. D.B BINU]
PRESIDENT**

**[HON'BLE MR. RAMACHANDRAN .V]
MEMBER**

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**