

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

FIRST APPEAL NO. NC/FA/258/2022

(Against the Order dated 28th February 2022 in Complaint 183/2019 of the State Consumer
Disputes Redressal Commission Chandigarh)

SKODA AUTO VOLKSWAGEN INDIA PVT. LTD.

PRESENT ADDRESS - SILVER UTOPIA, 4TH FLOOR CARDIAL GEACIOUS ROAD , CHAKALA,
ANDHERI (EAST) MUMBAI , MUMBAI CITY, MAHARASHTRA-400099.

.....Appellant(s)

Versus

ANUJ GUPTA & ANR.

PRESENT ADDRESS - S/O LATE SH. MUKESH KUMAR GUPTA, R/O H NO 120, SEC-9,
PANCHKULA

VOLKSWAGEN CHANDIGARH

PRESENT ADDRESS - M/S LALLY MOTORS INDIA 'P' LTD., PLOT NO.72, INDUSTRIAL AREA,
PHASE-1, CHANDIGARH

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA , PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.) , MEMBER**

FOR THE APPELLANT:

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FOR THE RESPONDENT:

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DATED: 28/02/2025

ORDER

BEFORE:

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**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.), MEMBER**

For the Appellant Ms Ekta Bhasin, Advocate (VC)

For Respondent no.1 Mr Siddharth Mittal, Mr Sumit Sharma,
Advocates with Mr Anuj Gupta – IN PERSON

For Respondent no.2 Ms Aditi Srivastava, Advocate (VC)

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ORDER

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PER SUBHASH CHANDRA

1. The appellants are before us in this First Appeal in challenge to the order dated 28.02.2022 of the State Consumer Disputes Redressal Commission, UT Chandigarh (for short "State Commission") in complaint no. 183/2019 under Section 51 of the Consumer Protection Act, 2019 ("Act") directing appellant herein to refund Rs 8,91,675/- towards price of car purchased by the respondent no 1 on 18.09.2015 with interest @ 9% p.a. from 18.09.2015 within 30 days or with 12% p.a. till realization and jointly and severally with respondent no. 2 herein to pay Rs 50,000/- for mental agony, harassment and deficiency in service and Rs 25,000/- as litigation cost within 30 days failing which with interest @ 9% p.a. till realization and for the vehicle to be handed over by the respondent no. 1 to appellant on receipt of decretal amount, and in case the vehicle was in the workshop of respondent no. 2, by it.

2. For the reasons stated in the IA for the condonation of delay, the delay of 20 days in the filing of the appeal was condoned in the interest of justice.

3. We have heard the learned counsel for the parties and perused the records carefully.

4. The brief conspectus of facts in the case is that respondent purchased a Volkswagen Vento 1.5 AT-TDI Highline car on 18,09,2015 from M/s Swami Automobiles Pvt. Ltd. (erstwhile dealer) for a consideration of Rs 11,88,900/-. The vehicle was reported for service, maintenance, routine repairs including accidental repairs on multiple occasions to the workshop of respondent no. 2. However, respondent no. 1 contends that he was dissatisfied with the service and alleged various manufacturing defects in the car. Following a legal notice on 07.05.2019 which was contested by respondent no. 2 as baseless, respondent no. 1 filed a complaint before the State Commission alleging manufacturing defect in the car. The State Commission, on contest, and after appointing the Punjab Engineering College as a technical expert under Section 13(1)(c) of the Act upheld the complaint and directed refund with 25% depreciation with compensation and costs. This order is impugned before us.

5. Admitting the sale of the vehicle and the frequent reporting of the vehicle to the workshop of the respondent no. 2, the case of the appellant is that there was no manufacturing defect in the vehicle which suffered from normal wear and tear and had been extensively used, having covered 1,60,376 kms as on 14.02.2019. The vehicle reported to the workshop on 21.11.2015 for the first time when it had done 8564 kms, on 15.04.2016 (27,853 kms), 24.05.2016 (30,123 kms for service after 30,000 kms), on 08.09.2016 (44,917 kms) for an accidental job when gear box housing was replaced, on 13.12.2016 (63,115 km), 01.03.2017 (79,132 kms), 09.06.2017 (93,377 kms), 14.06.2017 (94,232 kms for gear shift issues), 31.07.2017 (1,04,010 kms for abnormal noise from engine), 19.12.2017 (1,21,078 kms), 08.08.2018 (1,44,345 kms), 13.10.2018 (1,47,177 kms) and on 14.02.2019 (1,60,376 kms), when the engine had seized due to low engine oil, and the vehicle was left with the respondent 2. The appellant contends that the vehicle's extensive use indicates wear and tear issues and that the frequency of reporting to the workshop of respondent no. 2 was for both routine servicing after every 30,000 kms, accidental and specific complaints associated with usage. The vehicle was attended to as per warranty conditions and returned to the respondent no. 1 to his satisfaction. Issues of wheel balancing, wheel alignment, brake pads, leakage of coolant, gear box, engine oil depletion were stated to be the consequence of extensive use the car had been put to. It was denied that there were any manufacturing defects as alleged. Appellant placed reliance on the judgment of this Commission in **Classic Automobiles Vs. Lila Nand Mishra & Ors.**, I (2010) CPJ 235 (NC) and **Maruti Udyog Ltd. Vs. Has Mukh Laksh Michand & Ors.**, III (2009) CPJ 229 (NC) to argue that a manufacturing defect was much more than an ordinary defect and cannot be rectified by merely replacing the defective part and it is a defect with which a car cannot run. Appellant also relied upon these judgments to contend that the car could not have been used for nearly 3 ½ years for over 1,60,000 kms with a manufacturing defect and to argue that the State Commission erred in not appreciating this fact.

6. It was also stated that the respondent no. 1 had failed to disclose that the vehicle had met with an accident and had therefore suppressed material facts which he was required to disclose as per the ratio in **SP Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs**, (1994)

1 SCC 1 and **Shalini Vohra, Vice President Human Resources, Spice Jet Ltd. Vs Akanksha Singh Bhadoriya**, 2014 SCC OnLine NCDRC 81.

7. Reliance was also placed on **Tata Motors Ltd. Vs Antonio Paulo Vaz & Ors.**, 2021 SCC OnLine SC 125 and on **Shivani Vs. Managing Director, Mahindra & Mahindra Ltd. & Ors.**, 2023 SCC OnLine NCDRC 228 to contend that the relationship between the appellant and the respondent no. 2 was that of 'Principal-to-Principal' and hence the appellant could not be held accountable for any act of commission or omission on part of respondent no. 2. It was argued that the State Commission erred in ignoring the terms and conditions of the warranty to which the liability of the manufacturer were limited and despite taking notice of the fact of accident related damage to the car had fastened the liability of repairing the car free of cost on the appellant. It was contended that in case of an accident, under warranty terms, the liability of the appellant did not arise as per the ratio in **Bharathi Knitting Co. Vs. DHL Worldwide Express Courier**, (1996) 4 SCC 704.

8. It was argued that the State Commission failed to appreciate that the expert opinion had been made in a mechanical manner without providing any details of the inspection or the reasons for concluding a manufacturing defect. The report was also silent with regard to the methodology adopted to determine the defects since the vehicle was in a dismantled state and had been lying in the workshop for 2 years where it would have deteriorated. Furthermore, the reference for expert opinion at the stage of final arguments was an afterthought. It was also argued that the expert opinion merely states that the issues highlighted "may" be attributed to a manufacturing defect without any data or basis for the conclusion. In this connection, reliance was placed by the appellant on the judgment of the Hon'ble Supreme Court in **Ramesh Chandra Agarwal Vs. Regency Hospital Ltd. & Ors.**, (209) 9 SCC 709.

9. *Per contra*, respondent no. 1 contended that despite the assurance of stringent quality standards, the vehicle experienced issues with the engine, software and gear shifting merely 2 months after the purchase. These issues continued to persist despite several visits to the

workshop for abnormal noise, gear shifting problems, engine heating and oil leakage. The appellant had replaced critical components such as dual clutch and mechatron, which was a major component, and the email dated 12.10.2018 was evidence of the same, despite which the problems persisted. It was argued that the appellant had wrongly concluded that the issues with the car were those of normal wear and tear. It was stated that the vehicle was accepted after repairs only reluctantly. It was denied that the vehicle had been sent for repairs on 01.08.2016 for an accident related repair and it was contended that the appellant was attempting to shift the liability through this argument. The vehicle had a significant issue with the engine and gearbox which was a manufacturing defect.

10. Reliance was placed on this Commission's orders in (i) ***Nuzhat Vs. Dee Dee Motors Pvt. Ltd.***, RP No. 1053 of 2016 wherein manufacturing defect was defined as a persisting issue despite attempts to repair which indicated inherent flaws; (ii) ***Baljeet Kaur Vs. Divine Motors***, RP No. 1336 of 2017 which emphasized the onus of proof on the complainant in case of alleged manufacturing defects and to argue that in the instant case the expert committee's report was compelling evidence. Reliance was also placed on the judgment of the Hon'ble Supreme Court in ***Ford India Private Limited Vs. M/s Medical Elaborate Concept Pvt. Ltd. & Ors.***, Civil Appeal No. 4192-4194/2023 wherein it had been directed to pay compensation of Rs 42 lakhs in a matter in which there were concurrent findings of the State and National Commission regarding replacement of engine free of cost and daily costs.

11. As regards the report of the Expert Committee, It was submitted on behalf of the respondent no. 1 that the opinion had full sanctity in the eyes of law and was legally binding in view of the provisions of the Consumer Protection Act, 1986 in Section 13(1)(c) [Section 38 of the 2019 Act]. It was contended that the report highlighted that the vehicle in question encountered issues from the time of purchase with the service provider failing to promptly and adequately rectify them, which ultimately led to the vehicle's failure. It was therefore contended that based on the evidence and relevant case laws, the conclusion of the State Commission that the vehicle suffered from manufacturing defects despite attempts to repair it, be upheld and the present appeal dismissed

with costs.

12. From the facts of the case, it is apparent that the vehicle had been extensively used for nearly 3 years and had covered 1,60,376 kms as on the date the vehicle was last brought to the respondent no. 2. The vehicle was attended to from time to time for repairs and replacement of parts as per warranty as is evident from the history of the car's repairs presented by the appellant, which has not been disputed, except for the visit to the workshop on account of an accident. The vehicle was also serviced after every 30,000 kms as per maintenance manual. The vehicle was received back by the respondent no. 1 indicating satisfaction with the services. It appears incongruous that a car which has been used so extensively could have been so used if it had a manufacturing defect. We are therefore unable to consider this contention of the respondent.

13. Further, the law is well established that the mere fact of frequent repairs or references to a workshop of a vehicle alone does not amount to there being an inherent manufacturing defect necessitating the vehicle manufacturer liable to replace the vehicle or to refund its cost. A vehicle is covered under warranty and under the terms of warranty the vehicle owner is entitled to the replacement of parts covered by warranty as per the terms and conditions of the Policy. The Hon'ble Supreme Court has held in *Maruti Udyog Ltd. Vs. Susheel Kumar Gabgotra*, (2006) 4 SCC 644 that under the warranty the manufacturer was obliged to replace only parts and that there was no obligation to replace the entire vehicle. This Commission has held in *Sushila Automobiles Pvt. Ltd. Vs. Dr Birendra Narain Prasad & Ors.*, 2010 SCC OnLine NCDRC 144 that merely because a vehicle had been taken to a workshop repeatedly will not by itself amount to be a manufacturing defect and in *Maruti Udyog Limited Vs. Hasmukh Lakshmidhand & Anr.*, 2009 SCC OnLine NCDRC 74 that to prove manufacturing defect, the opinion of an expert was necessary.

14. The provisions of the Act with regard to the process to be followed in respect of a complaint alleging 'manufacturing defect' has been well laid down as per Section 38 which reads as under:

38. Procedure on admission of complaint.—(1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of

settlement by mediation, proceed with such complaint.

(2) Where the complaint relates to any goods, the District Commission shall,—

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(c) **if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods**, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and **refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission** within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;

(g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.

[Emphasis supplied]

The Act has also provided as per Section 2 (1) (i) that an “appropriate laboratory” shall mean

(2) "*appropriate laboratory*" means a laboratory or an organisation—

(i) recognised by the Central Government; or

(ii) recognised by a State Government, subject to such guidelines as may be issued by the Central Government in this behalf; or

(iii) established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

15. Accordingly, the reference by the State Commission to the Punjab Engineering College, Chandigarh to examine the car in question from the perspective of an 'expert' cannot be questioned. It is, however, necessary to consider the objection of the appellant that at the time of reference for an 'expert opinion', the vehicle had been in a dismantled state in the workshop of respondent no. 2 for nearly two years. The appellant has therefore questioned the usefulness of the reference since the issue of establishing whether there was any manufacturing defect could not have been realistically achieved. We are inclined to agree with such an argument since a car lying idle and dismantled for an extended period of 2 years could hardly be examined even by experts for a manufacturing defect of the engine, gear box and mechatronics.

16. The report dated 23.08.2021 of the Punjab Engineering College, Chandigarh in response to the reference made by the President, State Commission brought on record by the appellant and admitted by the respondent reads as under:

After going through the material available on record and inspection, the committee is of the opinion that **the vehicle in question is having problems since the purchase of the vehicle. The service provider was not able to rectify it timely and completely, which in turn caused the failure of the vehicle so the same may be attributed to a manufacturing defect.**

[Emphasis supplied]

The report of the "appropriate laboratory" in the instant case cannot be considered in our opinion because the report does not mention any specific part, mechanical or otherwise, to be inherently defective and specify the manner in which it could be so considered. The report has no relevance in the present case as it is not definitive and categorical in its recommendation since it does not mention which part is to be considered to be inherently defective, with technical reasons arrived at

on the basis of tests conducted or evidence relied upon. Further, it is qualified in stating that the car “*may*” have a manufacturing defect. For these reasons the report of the Punjab Engineering College, Chandigarh cannot be considered to be a definitive opinion that establishes ‘manufacturing defect’ in the car in question. The State Commission has therefore erred in relying upon the report to return its finding of the manufacturing defect in the car.

17. From the discussion above, and the facts and circumstances of the case, we are inclined to concur with the submissions of the appellant. It is manifest that the allegation of an inherent manufacturing defect in the car in question has not been conclusively established by the respondent no.1. The finding of the State Commission in this regard in the impugned order is based on an erroneous appreciation of the evidence on record and the settled law on the subject and cannot be sustained. The appeal is therefore found to have merits and is accordingly allowed. The impugned order is hereby set aside. There shall be no order as to costs.

18. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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AVM J. RAJENDRA, AVSM VSM (RETD.)
MEMBER