IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Future Automobiles (Private)
Limited,
No. 14,
De Fonseka Place,
Colombo 5.
Petitioner

CASE NO: CA/WRIT/26/2016

Vs.

1. Consumer Affairs Authority of Sri Lanka,
   Level 1 and 2,
   CWE Secretariet Building,
   No. 27,
   Vauxhall Street,
   Colombo 2.
2. Indika Prasad Devasurandra,
   No. 21,
   Robert Place,
   Dehiwala.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Thishya Weragoda for the Petitioner.
Indula Ratnayake for the 1st Respondent.
Sanath Weerasinghe for the 2nd Respondent.

Decided on: 18.02.2019

Samayawardhena, J.

The petitioner company filed this application predominantly seeking a mandate in the nature of a writ of certiorari to quash the decision (A15) of the 1st respondent Consumer Affairs Authority made on 31.08.2015 in terms of section 13(4) of the Consumer Affairs Authority Act, No. 9 of 2003. By this order, the 1st respondent, after an inquiry into the complaint made by the 2nd respondent consumer, directed the petitioner trader to provide a brand-new Ford Ranger Double Cab instead of the present one, to the 2nd respondent.

The pivotal argument of the learned counsel for the petitioner is that the 1st respondent had no jurisdiction to hear this complaint as the complaint is prescribed inasmuch as it has been made to the 1st respondent three months after the sale of the motor vehicle.

Section 13(2) of the Act reads as follows:

> *A complaint under subsection (1) which relates to the sale of any goods or to the provision of any service shall be made to the Authority in writing within three months of the sale of such goods or the provisions of such service, as the case may be.*

As the learned counsel for the petitioner admits[1], this Court in a number of cases[2] has held that, when there is a warranty or a guarantee, the complaint could be made within three months after the expiration of the said warranty or guarantee stated in section 13(1)(b) of the Act.

Section 13(1)(b) reads as follows:

> *The Authority may inquire into complaints regarding the manufacture or sale of any goods which does not conform to the warranty or guarantee given by implication or otherwise, by the manufacturer or trader.*

The above conclusion has been reached on the following basis:

> *Section 13(2) must be given a purposive interpretation. If a warranty of goods covers for a period of two years and the purchaser can only complain within three months of the purchase of the goods in relation to the breach of a warranty or guaranty, it will lead to absurdity and the protection given by section 13(1)(b) would be rendered nugatory.*[3]

I am in entire agreement with that reasoning.

If I may add a few words to elaborate it further, under section 13(1)(b), a consumer can complain to the Authority for any

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[1] Vide paragraph 14 of the written submission of the petitioner.
[2] David Pieris Motor Company Limited v. Consumer Affairs Authority, CA/WRIT/635/2007 decided on 03.08.2009, Aqua Technological (Private) Ltd v. Consumer Affairs Authority [2012] 1 Sri LR 358, Micro Cars Limited v. Consumer Affairs Authority, CA/WRIT/189/2014 decided on 01.07.2016, A Base Mechfarms (Pvt) Limited v. Consumer Affairs Authority, CA/WRIT/31/2013 decided on 27.04.2016.
[3] David Pieris Motor Company Limited v. Consumer Affairs Authority, CA/WRIT/635/2007 decided on 03.08.2009 at page 6.

violation of a warranty or guarantee given expressly or impliedly[4] in relation to a good sold. If the warranty period for a particular good, for instance, is three years, the consumer can, in terms of section 13(1)(b), complain to the Authority during the period of three years, but the Authority can entertain complains made only during the first three months of the warranty period. Such an interpretation obviously leads to absurdity. It is a canon of interpretation that statutes shall be construed to avoid absurdity. Further, such an interpretation also, *ex facie*, defeats the intention of the legislature in introducing this special piece of legislation, which is primarily the protection of the consumer.

Hence I am unable to accept the argument of the learned counsel for the petitioner that the earlier decisions of this Court on that point are *per incuriam* decisions.

In the instant case, although the complaint was not made within three months of the purchase of the motor vehicle, it was made within three year/60,000 km warranty period.

The next argument of the learned counsel for the petitioner is that the warranty was not a full/comprehensive warranty but a limited one and therefore most of the complaints of the 2nd respondent were not covered by the warranty.

This kind of position has never been taken up by the petitioner at the inquiry before the Authority and therefore this is an afterthought. At the inquiry, as seen from the inquiry notes 1R6, the petitioner undertook to rectify the defects of the motor vehicle. In the last page of 1R6 the petitioner has admitted that

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[4] For implied warranty see section 15 of the Sale of Goods Ordinance, No. 11 of 1896.

the warranty is for three years or 60,000 km. There the petitioner has not mentioned the Authority that the warranty is not a comprehensive one but subject to conditions. A4 is an unsigned specimen warranty not relevant to this sale. It is the position of the 2nd respondent that, as he was informed, three years or 60,000 km whichever occurs first, is a comprehensive warranty. If the petitioner says that it is a limited warranty, the petitioner being the trader shall tender a copy of the signed warranty given to the consumer at the time of the sale. It is clear that no such signed warranty has been given to the 2nd respondent. In any event, even this specimen warranty marked A4 is not clear about the limitations. Under "*What is covered*" it is stated "*The authorized Ford Motor Company dealer will, without charge, repair, replace, or adjust all parts on your vehicle that malfunction or fail during normal use during the applicable coverage period due to a malfunctioning defect in factory-supplied materials or factory workmanship*."

The 2nd respondent has complained about various defects of the vehicle when the vehicle has done about 30,000 km—vide *inter alia* A13. When the vehicle has done about 40,000 km, the petitioner admits, replacing of *inter alia* Transmission Solenoid Control Body, Fuel Gauge etc. under warranty. Transmission Solenoid Control Body is supposed to be the nerve center of the transmission and failure of it directly affects the running of the vehicle. Fuel Gauge is a basic one installed to indicate the amount of fuel in a fuel tank. This also was malfunctioning and therefore the vehicle at one time stopped in the middle of the town forcing the petitioner to bring the vehicle to their place for thorough investigation to later realize that the Fuel Gauge was not working and the vehicle has stopped due to want of fuel.

This is a serious matter. That shows that the consumer who has spent Rs. 4,900,000/= has not got what he expected and promised.

The learned counsel for the petitioner submits that the complains of Breaks, Air Conditioning, Shock Absorbers, Fuel Consumption etc. are aspects falling within wear and tear, and excluded from warranty. These are questions of fact, should have been placed before the inquiry panel of the Authority which inquired into the complaint of the petitioner. Take for instance, malfunctioning of an Air Conditioner in a vehicle after 10,000 km is due to a factory fault or due to wear and tear is a question of fact. That kind of questions cannot be decided in a writ application.

Another complaint of the learned counsel for the petitioner is that the inquiry by the 1st respondent Authority was tainted with impropriety. At the last date of the inquiry, i.e. on 23.06.2015, according to 1R9, the petitioner has not participated. The petitioner in paragraph 32 of the petition stated that "*the 1st respondent conducted a further hearing, however without any notice on the petitioner and in the circumstances, the petitioner was absent and unrepresented at the said hearing on 23rd June 2015.*" However when the 1st respondent tendered proof marked 1R8(a) and 1R8(b) with the statement of objections to say that notice was in fact sent to the 1st respondent by registered post, the petitioner in the written submissions has changed his earlier position and stated that the "*absence on the second day was due to the petitioner not receiving the notice in due time.*" That shows the *mala fides* of the petitioner. It appears from A13, a letter sent by the petitioner to the 1st respondent dated 22.08.2014,

the petitioner has decided to take action against the 2nd respondent for tarnishing the name of the petitioner by making complains against the petitioner. The last paragraph of that letter reads as follows: "*We would like to bring to your (the 1st respondent's) attention that unless the customer (the 2nd respondent) refrains from intentionally or unintentionally tarnishing the good name of our brand and company, we will be compelled to escalate this matter further to protect our interest.*" In my view, that means, the petitioner has at that point decided not to proceed with the inquiry any further. Therefore it can be concluded that the absence of the petitioner at the last inquiry date which fell after this letter was intentional.

The petitioner further says that the petitioner was not given copies of the technical reports obtained by the petitioner regarding this vehicle. The petitioner in paragraph 20 of the petition admits that "*at the said hearing, the 2nd respondent provided purported technical reports on the vehicle made by the Automobile Association of Sri Lanka and Diesel and Motor Engineering PLC and indicated that the vehicle had the following faults which needed attention: (a) ABS-Need Attention (Pedal Judder) (b) Auto Transmission-Sluggish (c) Shock Absorbers Need Attention (Replace) (d) Suspensions Need Tuning*". That means, at the inquiry, those technical reports have been tendered by the petitioner to the Authority in front of the petitioner and the petitioner knew the contents of them. These inquiries are not very formal inquiries. They are *sui generis* but conducted with due regard to the rules of natural justice. As seen from the email correspondence marked A6(c), the petitioner has informed about these reports to the parent company also well before the inquiry began. Hence even assuming that the copies of those

reports were not formally given to the petitioner at the inquiry, as the petitioner was fully aware of the contents of them, no grave prejudice has been caused to the petitioner thereby. It is not the complaint of the petitioner that despite his requests, the copies of those reports were not given to him.

Lastly, learned counsel for the petitioner submits that the order of the 1st respondent to replace old vehicle with brand-new one is disproportionate having regard to the fact that the 2nd respondent at that time has used the vehicle for 2 years, and therefore at most, the 2nd respondent is entitled only to nominal compensation in respect of minor defects complained of. The defects complained of and not rectified as stated in the impugned order marked A15(b) may be minor to the trader but not to the consumer and to the panel of inquirers. In terms of section 13(4) of the Act, the 1st respondent Authority is entitled to order the manufacturer or trader to pay compensation to the aggrieved party or replace such goods or to refund the amount paid for such goods. Taking into consideration all the facts and circumstances relating to this complaint, I cannot say that the decision of the 1st respondent is disproportionate to the complaint made.

Application of the petitioner is dismissed. No costs.

Judge of the Court of Appeal