

Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

Website : www.advantageconsumer.com

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ADVANTAGE - VIII

Queries & Answers through the Web

(www.advantageconsumer.com is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

Hyundai Motor penalised for defective air bags fitted in its vehicle, making it unsafe during an accident.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION,
NEW DELHI

FIRST APPEAL NO. 850 OF 2020

(Against the Order dated 07/10/2020 in Complaint No. CC/38/2018 of the State Commission Delhi)

HYUNDAI MOTOR INDIA LIMITED
5TH AND 6TH FLOOR, CORPORATE ONE, BAANI
BUILDING, PLOT NO.5, COMMERCIAL CENTRE,
JASOLA VIHAR
SOUTH EAST DELHI

.....Appellant(s)

Versus

SHAILENDER BHATNAGAR
48 A, JYOTI APARTMENTS, ROHINI SECTOR-14
NORTH WESTDELHI

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

Dated : 05 Jan 2021

ORDER

1. The present Appeal is filed by the Appellant/Opposite Party against Order passed by Delhi State Consumer Disputes Redressal Commission (hereinafter referred to as the “State Commission”) in CC/38/2018 dated 07.10.2020.

2. Along with the Appeal, IA/7429/2020, application for condonation of delay of 33 days has also been filed by the Appellant. However, according to the Registry, there is no delay in filing the Appeal. Accordingly, IA/7429/2020 is allowed.

3. Case of the Complainant is that on 21.08.2015 Complainant/Respondent purchased a vehicle, Creta 1.6 VTVT SX+ bearing Engine No.95120, Chassis No.MALC381CLFM018320 from the Appellant/Opposite Party. In the car, there was facility of two front airbags. On 16.11.2017, when the Complainant was travelling with his family, the car met with an accident on Delhi-Panipat Highway, resulting in major damage to RH front pillar, RH front roof, side body panels front RH door panels and LH front wheel suspension. In the accident, front airbags of the car did not open, due to which the Complainant and his family members were severely injured. On 16.11.2017, Complainant lodged police report at Police Station G.T. Road, Ghanaur, District Sonapat. On 23.11.2017, Complainant sent a legal notice to the Appellant/Opposite Party demanding Rs.50 Lakhs for the loss and physical and mental trauma suffered by the Complainant and his family. Opposite Party got the accidental inspected car and admitted that the airbags did not open but did not make payment of the amount demanded by the Complainant. Complainant filed Complaint before the State Commission with the following prayer: -

“a. Direct the Respondent to compensate the amount of Rs.2,00,000/- including the medical expenses and professional loss borne by the complainant for him and his family also.

b. Direct the Respondent to pay a sum of Rs.20,00,000/- (Twenty Lakhs only) on account of harassment and mental agony faced by the Complainant.

c. Pay Rs.1,60,000/- (One lakh sixty thousand) towards litigation expenses.

d. Pass any other order as this Hon’ble Court deems fit in the interest of justice.”

4. Opposite Party contested the Complaint by filing reply. It was stated that the allegations made in the Complaint were false and frivolous. Complainant failed to make out a case against the Opposite Party and failed to prove that the Opposite Party had promised or assured any service which was not provided to the Complainant. It was also stated that the Complaint was barred by limitation as the limitation shall be reckoned from the date of purchase of the vehicle i.e. 21.08.2015. Complaint was also not maintainable on the ground of mis-joinder of party, as the Dealer from whom the car was purchased, was not made a party in the Complaint. Opposite Party also stated that as there was no manufacturing defect in the car, it was not liable as its liability was only limited to the performance of the car. Once the car was damaged in the accident, the same is not covered under warranty/extended warranty and the repair was carried out on chargeable basis.

5. State Commission after going through the evidence and documents placed on record and hearing the arguments of both the parties directed as follows:-

“Keeping in view the facts and circumstances of the present consumer complaint, we direct the opposite party to:

a. Compensate the complainant an amount of Rs.2,00,000/- for medical expenses and loss of income.

b. Compensate the complainant an amount of Rs.50,000/- for mental agony.

c. Pay to the complainant an amount of Rs.50,000/- as cost of litigation.”

6. Aggrieved by the order of the State Commission, the Appellant/Opposite Party filed the present Appeal. Heard the learned Counsel for the Appellant and the Respondent in person and carefully perused the material on record.

7. Learned Counsel for the Appellant submitted that the State Commission passed the impugned order without properly appreciating the facts of the case. He submitted that the Complaint itself was not maintainable before the State Commission for non-joinder of necessary party, because the Dealer from whom the Complainant had purchased the car was not made a party in the Complaint. . It was submitted that the Dealer purchases the car from the Opposite Party and the purchased cars are sold to the customers.

There is no privity of contract between the Complainant and the Opposite Party. The State Commission failed to appreciate this legal aspect of the matter. Learned Counsel for the Appellant relied on the judgment of this Commission in *Maruti Udyog Limited vs. Nagender Prasad Sinha II (2009) CPJ 295 (NC)*. He also submitted that the Complaint was barred by limitation as the cause of action for filing the Complaint accrued to the Complainant on 21.08.2015, when the car was purchased. Learned Counsel for the Appellant relied on the judgment of this Commission in *Ishwarlal Amarnai vs. Hero Puch&Anr. [III (2011) CPJ 132 NC]*. On merits, it was submitted that the liability of the Opposite Party was limited to the performance of the car and there was no complaint regarding performance of the car, hence the claim against the Opposite Party did not sustain. It was submitted that the airbags deploy only when there is severe impact of force and airbags may not deploy if the vehicle collides with the objects like poles and trees, when full force of the impact is not delivered to the sensors.

8. Respondent/Complainant submitted that the Complaint was within limitation period since the cause of action arose on the date of accident i.e. 16.11.2017 and not from the date of purchase i.e. 21.08.2015. He also submitted that the dealer was only a formal party and not necessary party and the deficiency was only on the part of the Opposite Party. The Complaint was, therefore, maintainable. On merits, the Respondent/Complainant submitted that the accident occurred with a high impact of force and resulted in damage to RH front pillar, RH front roof, side body panels front RH door panels and LH front wheel suspension. He submitted that due to defective airbags, the Complainant and his family members sustained major injuries and the State Commission, therefore, rightly held the Opposite Party liable to pay compensation.

9. State Commission observed that the major impact of collision of the vehicle was on the right hand front pillar, right hand front roof and the left hand front wheel suspension, all three of which lie on the front side of the vehicle. It was also observed that the airbags in the vehicle purchased by the Complainant was defective as the same did not work when the vehicle collided with the truck.

10. On 21.08.2015, Complainant purchased a vehicle, Creta 1.6 VTVT SX+ bearing Engine No.95120, chassis No.MALC381CLFM018320 from the Appellant/Opposite Party. On 16.11.2017, car met with an accident, resulting in major damage to RH front pillar, RH front roof, side body panels front RH door panels and LH front wheel suspension. Airbags of the car did not deploy, due to which the Complainant and his family members sustained severe injuries. On 16.11.2017, Complaint was also lodged with Police Station G.T. Road, Ghanaur, District Sonapat, On 23.11.2017, Complainant sent a legal notice to the Appellant/Opposite Party demanding Rs.50 Lakhs for the loss and physical and mental trauma suffered by the Complainant and his family. Opposite Party got the vehicle inspected and admitted that the airbags did not deploy but did not make payment of the amount demanded by the Complainant.

11. Learned Counsel for the Opposite Party submitted that the limitation will start from the date of purchase i.e. 21.08.2015. In this case, however, cause of action arose on the date of accident i.e. 16.11.2017, when the defect relating to non-deployment of airbags came to the notice of the Complainant. Judgment relied by Learned Counsel for the Opposite Party in *Ishwarlal Amarnai* (supra) is distinguishable in the facts. In that case, Complainant purchased Hero Puch EZ, which started giving trouble including overflow of fuel, high consumption of petrol and trouble with the steering, from the very beginning. In the present case, the defect was noticed only on the date of accident i.e. 16.11.2017. The argument of the Opposite Party that the Complaint was time barred, therefore, does not sustain.

12. Regarding privity of contract, Learned Counsel for the Appellant/Opposite Party submitted that there was no privity of contract between the Complainant and the Opposite Party and therefore the Opposite Party was not liable to pay any damages to the Complainant. Judgment relied by Learned Counsel for the Appellant in *Maruti Udyog Limited vs. Nagender Prasad Sinha* (supra) is not applicable in the facts of the case. In that case, this Commission held that principal is not liable for the act done by its agent. In the present case, there is no issue regarding act of the agent and liability of the principal. In the case on hand, the issue relates to a manufacturing defect and the manufacturer is the Appellant/Opposite Party. Learned Counsel for the Appellant/Opposite Party submitted that the airbags deploy only when there is severe impact of force and airbags may not deploy if the vehicle collides with objects like poles and trees, when full force of the impact is not delivered to the sensors. Learned Counsel for the Appellant argued that the SRS

Investigation report dated 01.12.2017 clearly stated that the impact of the accident was such that the minimum threshold force required for the deployment of the airbags was not delivered to the front sensors installed in the engine compartment and hence, the airbags did not deploy. No expert evidence was produced by the Respondent to substantiate any manufacturing defect. The Complainant contended that he purchased the car for its safety features highlighted by the Manufacturer, but the airbags did not function when required, due to which he sustained serious injuries as can be seen from the medical prescriptions and bills furnished by the Complainant. The impact/force required for triggering the front airbags was not made known to the Complainant. Nowhere has the minimum threshold force been quantified and this defence can never be refuted. Highlighting safety features including airbags while selling the car and not elaborating and disclosing the threshold limits for their opening is by itself an unfair trade practice. Complainant, however, had filed photographs of the accidental car. Major damage to RH front pillar, RH front roof, side body panels front RH door panels and LH front wheel suspension is seen in the photographs of the car. Without forceful impact, the car would not have been so badly damaged. The accident was a major accident in which the entire driver side of the car, the side part and even the front mirror of the car got smashed and broken. The impact of the accident was so intense that the front bumper grill, dash board and the radiator got totally damaged. The State Commission rightly observed “that expert evidence need not be relied upon where the facts speak for themselves. This is a case of *Res Ipsa Loquitur* where the photographs of the damaged vehicle placed on record clearly show the impact of the accident on the vehicle.”

13. In view of the above discussion, the impugned order passed by the State Commission is justified. Appellant failed to point any illegality or irregularity in the order passed by the State Commission, warranting interference in exercise of Appellate jurisdiction Appeal is accordingly dismissed with no order as to cost. ■

***Karmayogi* Scheme vis a vis the CPGRAMS**

Government of India has been taking several initiatives to make the bureaucracy more efficient, professional and responsive to the citizens, whom they are supposed to serve. It is in this direction, the *Karmayogi* Scheme was introduced in September 2020. Can the bureaucracy change its culture, nurtured and patronised over 70 years, is a serious challenge. Centralised Public Grievance Redress And Monitoring System (CPGRAMS) is an online web enabled system, being operated by the Government of India, through the Directorate of Public Grievances (DPG) and the Department of Administrative reforms and Public Grievances (DARPG). One comes across CPGRAMS as a single window solution for all issues affecting the individuals, be it relates to banking, insurance, pension, etc., which come under the purview of DARPG.

My experience with CPGRAMS was not that great. This is in respect of Life Certificate, which as an annuitant of LIC, I am required to submit every year, against my matured LIC Policy. To do this a Form is devised by LIC and the concerned Policyholder is supposed to fill-in the requisite details and get it endorsed by a LIC Official / Officer of select institutions / Others, requiring unproductive running around.

As a beneficiary of EPS, I have been filing my Life Certificate to the concerned EPFO, through the government's Jeevan Pramaan portal (<https://jeevanpramaan.gov.in/>).

I had suggested that LIC could utilize that Certificate or devise similar digital verification means, so that the pensioners / annuitants can comply with the requirements, without much running around. I had written to the ED-PGS, and later to the Chairman, LIC, as the issue needs to be tackled at the senior level. Since there was no response, I took up through the CPGRAMS Portal, and registered my grievance.

Instead of giving a solution to the grievance registered, CPGRAMS sent me the appended mail stating that the grievance had been disposed of. The status is, as shared with me, the South Zone IPP Cell, LIC, has referred the matter to their higher office, for their perusal, as the decision needs to be taken by them.

When a matter is being processed, and the grievance is yet to be resolved, how CPGRAMS can state that the grievance has been disposed of? This gives an impression that the staff behind this process, probably, in their anxiety to close a grievance are giving a wrong impression to their higher-ups in the government and are committing grave injustice to the public, who approach them with some hope.

Though, the highest authority/ies in the government could devise and nudge the bureaucrats towards being professional and efficient, by devising such schemes like *Karmayogi* Scheme and putting in place such structures as CPGRAMS, whether they will succeed in delivering the desired results, is a mute question.

Anyhow, keeping aside all other shortcomings, I have since registered my Appeal, with the Appellate Authority. After all, India cannot face the challenges without "*sab ka prayaas*".

In this context, I cannot help wondering whether the government will be better off, by inducting all those suitable individuals, who are in public service and handling citizen grievances, in such machinery as CPGRAMS, where you need missionary zeal to achieve results, rather than considering statistics alone, as a mode of service.

B. Vaidyanathan
Chief Mentor

LIC to accept Life Certificates sent through email

Though, LIC has not announced any digital verification process, as a mode of submitting the Life Certificate, for all those Policyholders, who are getting their annuity/pension, against their matured Policy/ies, based on our direct follow-up and through CPGRAMS, has now informed that it will accept the Life Certificate sent by email. The following email received from the IPP Cell, South Zone, LIC, is reproduced below (which should be applicable in other Zones as well):

From: LIC of India <licipp@licindia.com>
To: "firstindyan@yahoo.in" <firstindyan@yahoo.in>
Sent: Tuesday, 10 August, 2021, 09:12:44 am IST
Subject: Life certificate under annuity policy no. xxxxxxxxx

Dear Annuitant
(SRI.B.VAIDYANATHAN, B.TECH.)

This is to inform you that the requirement of life certificate has become due under the above annuity policy.

We are happy to inform you that LIC has enhanced your convenience by providing the facility for submission of life certificate to any of the LIC branch office and availing instant acknowledgement at the help desk counter of the branch office without any hassle. Or else you may submit the life certificate at IPP cell at the below mentioned address or any LIC divisional office or any LIC zonal office IPP cell across the country.

You are aware that due to imposition of nation-wide lockdown on account of Novel Corona Virus (COVID-19) pandemic, there is restriction on movement especially for senior citizens. In order to facilitate submission of life certificate from home without moving out, we have made following additional provision:

You may submit scanned copy or image of the life certificate (in the attached format duly filled, signed and witnessed) through email.

Kindly submit duly completed life certificate, as attached in the mail.

Thanking you,

Yours faithfully,

Secretary (CRM),S.Z.O
SZO/CRM/IPPCCELL
II FLOOR, LIC BUILDING
153 ANNA SALAI,CHENNAI-600002
PH : 044-28616024,28616025,28616026,28616027
E-MAIL ID - sz_ippcell@licindia.com

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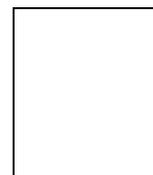
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