ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 4
Issue I

August 2022

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

Volume 4, Issue I August, 2022 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

TABLE OF CONTENTS

S. No.	Title of the Paper/ Author	Page No.
1.	Negative' And 'Positive' Obligations of The State – The Journey Thus Far *J. Ravindran*	1
2.	Clinical Legal Education and The Role of Legal Aid Clinics In India *Navjeet Sidhu Kundal*	24
3.	Section 115 Of Mental Healthcare Act, 2017: A Lifeline to Suicide Attempters *Deepa Kaushik*	35
4.	Convention On the Status of Refugees 1951: More Eurocentric Than Universal *Aroup Raton Shaha*	45
5.	Principal-to-principal relationship with respect to Automobile manufacturer and dealer in consumer dispute cases *Hansie Singh Nagpal*	59
6.	Domestic Violence During Pandemic: A Socio-Legal Analysis *Nivedita Chaudhary*	70

STUDENTS SECTION

7.	From Rio to Paris: What Have Developing Countries Really Achieved? *Niranjan E.V. & R. Divya Meenakshi*	87
8.	Intellectual Property Right: The Asset of New India *Prarthna R. Markod*	100
9.	The Concept of Judicial Review as A Process – An Analytical Study *Riya Jacob*	119
10.	Third-Party Funding in International Arbitration: The Need for India to Step It Up? *Arushi Anand*	128
11.	Explication On the Concept of Crowdfunding in The Indian Legal System *Saket Agarwal and Charu Agarwal*	139

12. Need For Formalisation of Gig Workers: Towards A Paradigm Shift in Working Model
Kinjal Keya and Aditya Pratap Singh 151

13. The Competition Commission of India's Attitude Towards Cross Border Mergers
Ahan Gadkari 166

14. Rising religious majoritarianism in India - the impediment to minorities rights and representation
Divyanshu Dubey 184

15. Racial discrimination in sports activity
Yuvraj Sharma 201

16. Evolving Interpretations of Legal Provisions Of 'Intestate Succession' In Light of Judicial Precedents
Samrat Bandopadhyay 214

CASE COMMENTS

17. Married women: Less than Humans? RIT Foundation v. Union of India
Yashvi Aswani 222

Principal-To-Principal Relationship with Respect to Automobile Manufacturer and Dealer in Consumer Dispute Cases

Hansie Singh Nagpal*

VIPS Student Law Review
August 2022, Vol. 4, Issue 1, 59-69
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
© Vivekananda Institute of Professional Studies
https://vslls.vips.edu/vslr/

Abstract

In the automobile manufacturing world, Standardization is the primary concern. In India, the NCRB collects detailed data on traffic accidents including road accidents for inferring the trend and patterns of traffic accidents for the planners to devise appropriate preventive strategies. The Number of 'Traffic Accidents' in India have decreased from 4,74,638 in 2018 to 4,67,171 in 2019. (However, the rate of deaths in road accidents per thousand vehicles i.e., 0.6 has remained same as it was in 2018). Maximum increase in number of traffic accidents cases in States from 2018 to 2019 was reported in Madhya Pradesh (from 49,080 to 53,379) followed by Rajasthan (from 22,401 to 24,281) and Uttar Pradesh (from 40,783 to 42,368). On the other hand, maximum decrease was reported in Tamil Nadu (from 66,110 to 59,499)[1]. Globally, India ranks first in the number of road accident deaths across the 199 countries and accounts for almost 11% of the accident-related deaths in the World. A total number of 449,002 accidents took place in the countryduring the calendar year 2019 leading to 151,113 deaths and 451,361 injuries. As India develops more road-based infrastructure, it is equally important that the entire chain from manufacturing tovehicle scrap is understood in terms of contract law, especially, the contractual arrangement where three parties i.e., consumer (purchaser of the vehicle), dealer and manufacturer are involved. Accidents attributed to mechanical/electrical/electronic failure of the vehicle can be either a manufacturing defect or non-manufacturing defect in nature. The

* Advocate with the Delhi Bar Council (graduated from VIPS, affiliated to GGSIPU).

1 Government of India, Report on Accidental Deaths and Suicides in India (National Crime Records Bureau, Ministry of Home Affairs, 2019).

paper revolves around, under what circumstances, the manufacturer will be liable for deficiency of services and dealer will be liable for the committing the same under the Consumer Protection Act.

Keywords: *Manufacturing defect, deficiency of services, maintenance, dealership agreement, unfair trade practice*

I. Introduction

Many of us suffer from the confirmation bias that the legal relationship between a manufacturer and a dealer of motor vehicles would be of the kind of a principal-to-agent relationship under the contract law. That, there would be vicarious liability impinged upon the manufacturer for any defect found in the vehicle at the time of the use by the consumer. Surprisingly, the contractual relationship between the two as observed in many judgments/ orders in peculiar circumstances is of a different kind i.e., of principal-to-principal one.

Before beginning with the principal discussion, it is important to recall that in a recent judgment i.e., Hyundai Motor India Limited v. Shailendra Bhatnagar[2], vehicles are held to be goods withinthe meaning of Section 2(7) of The Sale of Goods Act, 1930 and they carry implied conditions asto their fitness. That is a statutory mandate and that mandate also operates in respect of goods, whose defect is subject of proceeding in a consumer complaint under the Consumer Protection Act, 1986.

Now, to understand how legal obligations and duties are distributed between the manufacturer andthe dealer, the dealership agreement is crucial to the understanding of the said principal-to- principal relationship. Generally, the complainants in such cases where manufacturing defects arefound, generally the relief sought is the replacement of the old with a new vehicle. The onus of proof is on the complainant to prove that a manufacturing defect is found in the vehicle causing deficiency of service which constitutes an unfair trade practice. Once proved, the onus shits to the manufacturer to deny the same. The peculiar circumstances being that, unless it could be proved that the defect so found is a manufacturing one and not one which is occurs due to operational wear and tear, the liability cannot be impinged on the manufacturer.

The article revolves around the essentials of the relationship between a manufacturer and the dealer operating in the automobile industry and the consumer disputes involving the above two parties against the complainant-consumer. It includes, in detail, the legal complexities

2 Hyundai Motor India Limited v. Shailendra Bhatnagar, Civil Appeal No. 3001 of 2022.

involved in cases where a defective vehicle is sold to the latter and the claims regarding the liabilityof the same are to be determined by the adjudicating authorities.

II. Is Manufacturing Defect Only to Be Established by Expert Evidence?

Many a times, confusion arises as to whether evidence of an alleged manufacturing defect could be established by regular maintenance workers or by a verified independent third-party engineer/technician. Section 66 of the Consumer Disputes Act, 2019[3] allows the state/national consumer forum to appoint an 'amicus curiae' to assist the same in technical complexities. Presently, the law on the same has been expounded in multiple National consumer forum orders.

The Hon'ble National consumer forum expressed in *Telco v. Hardip Singh*[4]*, Mahindra and Mahindra Ltd. v. Ram Lakhan*[5] *and Classic Automobiles v. Lila Nand Mishra*[6]*,*

> *"That if any vehicle is taken for repair time and again it does not mean that there is manufacturing defect unless there is report by competent engineer. It is opined therein that in the absence of expert opinion it cannot be presumed that there is manufacturing defect. In the present case also,there is no report of competent engineer about manufacturing defect. "*

Routine adjustment of dysfunctional parts of the car does not amount to indication of the manufacturing defect. The perusal of job cards at the end of maintenance checkup issued by the service provider largely informs about the exact issues the car faces along with the date on which the repair was done and most importantly how grave an impact the defect will have on a vehicle'sperformance. For example: non-starting of the engine, low pick-up, weak suspension, low AC cooling with the shifting of the gear. Such faults being repaired even multiple times still do not qualify as a manufacturing defect.

However, at the same time, if an engine assembly is replaced due to faulty functioning, then it certainly qualifies as a manufacturing defect as was observed in *Anand Kumar Bansal v. Premier Ltd. & Another.*[7] In this matter, the manufacturer and the dealer, both,

3 The Consumer Protection Act, 2019, S. 66.

4 Telco v. Hardip Singh, 2011 (3) CLT 382.

5 Mahindra & Mahindra Ltd. v. Ram Lakhan, 2014 (2) CPJ 760.

6 Classic Automobiles v. Lila Nand Mishra, 2010 (2) COPT, 363.

7 Anand Kumar Bansal v. Premier Ltd. & Another, 2019 SCC Online NCDRC 1048.

did not explain the reasonwhy the engine assembly was replaced two times within a year of the purchase of the car by the complainant. The said repairs with the date of repair were listed in the job card and was adduced as evidence. It was also pointed out by the National Consumer Forum that the report of expert opinion was signed only by the service engineer of the Manufacturer and not by an independent expert opinion given by a third party.

Therefore, as observed in the same order:

> *"Since 'defect' means any imperfection or shortcoming and 'manufacturing defect' is a shortcoming in a product resulting from departure from its design and is dangerous than the consumer expects the product to be, we are of the considered view that stoppage of engine and replacement of the same twice during the first year squarely falls within the definition of 'defect' and 'manufacturing defect.' For all the afore-noted reasons we hold that the vehicle had a manufacturing defect which is unexplained by the Manufacturer and we do not find negligence on the part of the Complainant in leaving the vehicle behind with the dealer and not accepting the delivery in such circumstances."*

However, in the present case, the revision petitions were partly allowed and only refund of the purchase-consideration was ordered and not the replacement of the vehicle.

III. Onus of proof to prove manufacturing defect

In Baljeet Kaur v. Divine Motors[8], it was categorically held that:

> "*When a manufacturing defect is alleged, the onus of proof has to be on the complainant. Admittedly, the petitioner/complainant had produced, in support of her allegation of manufacturing defect, her own affidavit along with affidavit of 7-8 more witnesses. The District Forum correctly held - and the state commission concurred-that that these affidavits are no substitute for an expert opinion, to hold that the vehicle was indeed suffering from some manufacturing defect (s).*"

In Suresh Chand Jain v. Service Engineer and Sales Supervisor MRF Ltd[9]

8 Baljeet Kaur v. Divine Motors, RP No. 1336 of 2017 [III (2017) CPJ 599 (NC)].

9 Suresh Chand v. Service Engineer & Sales Supervisor MRF Ltd., RP Nos. 3845and 3846 of 2006 [I (2011) CPJ 63 (NC)]

"Onus to prove that there was a manufacturing defect in the tyres was on the petitioner which he failed to discharge by leading any cogent evidence. The petitioner did not produce any expert evidence to either show the nature of defect or proof of manufacturing defect. The petitioner has failed to prove that the tyres purchased by him suffered from any manufacturing defect."

IV. The Law on Principal-To-Principal Relationship

The Supreme court had two occasions to examine the legal status of a contractual relationship between a manufacturing company and a dealer in which the greater emphasis was laid upon the dealership agreement and the clauses thereof. They are explained herein below:

In the case of Tata Motors Ltd v. Antonio Paulo Vaz & Anr[10], the complainant had been misled into purchasing a 2009 model instead of the 2011 model as promised by the dealer. The vehicle (car) had already completed 622 km. He requested for refund of the price paid or replacement of the car with one of 2011. The price was however not refunded; neither was the car replaced. He filed a complaint in the district forum. The district forum determined 'deficiency in service' and held the dealer and the appellant (i.e., manufacturer of the car) to be jointly and severally liable.

The district forum's order, (made on 27.09.2013) noted that the car had some defects; the undercarriage of the car was *"fully corrugated and had scratch marks on the body. The alloy wheels were also corrugated inside and the car also travelled almost 622 km. Also, some parts such as music system was not provided although agreed."* The district forum held that there was deficiency in the service committed by the dealer and the appellant (manufacturer), and allowed the complaint, holding the dealer and the appellant (manufacturer) jointly and severally liable to replace the car with a new one of the same model or to refund the entire amount of the car with interest @10% from the date given of delivery. Both were also jointly and severally directed to pay Rs. 20,000/- to the complainant towards mental stress and agony in addition to costs of Rs. 5,000/-.

Before the National consumer forum and the state commission, the appellant-manufacturer's made arguments that there existed a principal-to-principal relationship between the two were negatived. The national consumer forum observed that, *"the sale of its goods is undertaken by the Manufacturer through its dealers, the Manufacturer exercises superintendence over*

10 Tata Motors Ltd v. Antonio Paulo Vaz & Anr., 2021 SCC Online SC 125.

its dealers including the right to terminate their dealerships. It also relied on a termination letter issued by the manufacturer to the dealer for lack of maintaining quality standards and for committing serious breaches in rendering customer service."

In para 28, the Supreme court held as follows: -

> *"The record establishes the absolute dearth of pleadings by the complainant with regard to the appellant's role, or special knowledge about the two disputed issues, i.e., that the dealer had represented that the car was new, and in fact sold an old, used one, or that the undercarriage appeared to be worn out. This, in the opinion of this court, was fatal to the complaint. No doubt, the absence of the dealer or any explanation on its part, resulted in a finding of deficiency on its part, because the car was in its possession, was a 2009 model and sold in 2011. The findings against the dealer were, in that sense, justified on demurrer. However, the findings against the appellant, the manufacturer, which had not sold the car to Vaz, and was not shown to have made the representations in question, were not justified. The failure of the complainant to plead or prove the manufacturer's liability could not have been improved upon, through inferential findings, as it were, which the district, state and National consumer forum rendered. The circumstance that a certain kind of argument was put forward or a defense taken by a party in a given case (like the appellant, in the case) cannot result in the inference that it was involved or culpable, in some manner. "*

The court further held that:

> *"Special knowledge of the allegations made by the dealer, and involvement, in an overt or tacit manner, by the appellant, had to be proved to lay the charge of deficiency of service at its door. In these circumstances, having regard to the nature of the dealer's relationship with the appellant, the latter's omissions and acts could not have resulted in the appellant's liability."*

In para 30, the law laid as follows: -

> *"Unless the manufacturer's knowledge is proved, a decision fastening liability upon the manufacturer would be untenable, given that its*

> *relationship with the dealer, in the facts of this case, were on principal-to principal basis."*

While determining the manufacturing defect, the adjudicating authority usually takes in account the distance covered by the subject-vehicle before the problem arises in the smooth functioning ofthe same. In this particular case, it was highlighted that the complaint stated on affidavit that the car was an old one and had already run 622 km; however, the legal notice issued to the dealer, on behalf of Vaz (complainant) had, to the contrary, claimed that the car had done 1448 kilometers. It was submitted that in these circumstances, it was essential that special knowledge on the part of the manufacturer about the fact that the make of the car was represented to be 2011, and that someone on its behalf had made that representation, had to be both pleaded and proved. In the absence of such proof, the manufacturer-appellant could not be held liable.

In essence, the manufacturer, since, is not privy to the details of correspondence between the dealer and the consumer; he cannot be made liable for misrepresentation made on behalf of the dealer within the meaning of the expression under Section 2(1)(g) read with Section 2(1)(o) and Section2(1)(r) of the Consumer Protection Act. Dealers sometimes deliberately hide the number of kilometers the subject-vehicle had covered before, especially if it's a second-hand vehicle and therefore, it becomes necessary for the adjudicating authority to look into this controlling factor, in order to ensure that not enough kilometers are covered by the vehicle for the complainant's claim of an existing manufacturing defect to succeed.

In the case of Mercedes-Benz India Pvt. Ltd. v. Intercard (India) Ltd.[11] the complainant filed a complaint that misrepresentation made by the dealer to purchase a different than the one which was advertised had resulted into 'unfair trade practice'. The state consumer forum agreed to the contentions of the complainant that dealer was an agent or distributor of the manufacturer and that the Manufacturer is to be held liable for the mis-representation made by the Dealer.

The national consumer forum in its detailed order observed as follows: -

> *"We find substance in the submission made by the Ld. Counsel for the Manufacture that the relationship between the manufacture and the dealer was on principle-to-principal basis. Averment made by the manufacturer that its relationship with the Appellant No. 2- dealer was on principle-to-principal basis was admitted by the Appellant*

11 Mercedes-Benz India Pvt. Ltd. v. Intercard (India) Ltd., 2013 SCC OnLine NCDRC 480.

> *No. 2 in its written statement. Appellant No. 2 was the authorized dealer and not the agent or distributor of the manufacturer. The Manufacturer sold the vehicles and spares to the Authorized Dealer on principle-to-principal basis. The Manufacturer cannot be held liable for the mis-representation, if any, made by the Authorized Dealer. The only grievance of the Respondent was that had the Dealer disclosed about the latest C 200 K model, they would have purchased the said model instead of C180 K model. Sometimes, even the dealers are not aware about the launching of the latest model by the manufacturer. Even otherwise, there is no evidence on record to show that there was any mis-representation on the part of the authorized dealer as a result of which the Respondent suffered huge financial losses. Dealer had offered to sell model C 180K which the Respondent purchased. The Respondent had used the vehicle for 50,000-60,000 kilometers. There was no manufacturing or any other defect in the vehicle purchased by the Respondent. This is evident from the letter dated 30.07.03 written by the Respondent to the Appellant No. 1 in which Respondent had stated that they had business relations with the TNT Motors - Appellant No. 2 for quite long and that they had recommended to many people to purchase the model sold to them. State Commission was not justified in directing the manufacturer to refund the costs of the car on return of the same by the Respondent and to pay the compensation of Rs. 5,00,000/- to be equally shared by the dealer.*

In the case of Honda Cars India Limited v. Sudesh Berry & Ors.[12], the matter involved a Honda car purchased by the complainant which met with an accident and as a result of deficiency of service by dealer, the complaint was registered. The district and state consumer forum found no fault of the manufacturer but directed the dealer to return the car duly repaired with damages for mental agony and imposed litigation costs. The national consumer forum, however, modified the order and directed the manufacturer to deliver a replacement modelto the complainant as a gesture of 'goodwill'.

The Supreme court overturned the order and observed:

> *"As the facts on record show that the car was used by respondents no. 1 to 3 for more than10 years, whereafter it suffered an accident. There*

12 Honda Cars India Limited v. Sudesh Berry & Ors., 2021 SCC OnLine SC 1313

is not an iota of material that the accident occurred as a result of any manufacturing defect. If there be any deficiency in service by the dealer or the authorized centre in rendering assistance for repairs of the vehicle, the manufacturer of the vehicle cannot be held liable."

V. Doctrine of 'Res Ipsa Loquitur' in Motor Accident Cases

In the very recent matter of Hyundai Motor India Limited v. Shailendra Bhatnagar[13], the respondent-complainant suffered grave injuries during a head-on collision accident crash of his Hyundai car with a truck. The car's airbags failed to deploy as per the representation made by themanufacturer in advertisement. The state and national consumer forum found manufacturing defects in the airbag system of the car. They applied the doctrine of 'res ipsa loquitur' upon learning about the extent of enormous damage the car had suffered in its mangled frontal part including front pillar, RH front roof, side body panels front right hand side door panels and left- hand side front wheel suspension. The forums held that, in such circumstances, there was no needof any expert evidence, as the grave injuries sustained by the complainant is itself indicative of thefaulty airbag deployment system.

The appellant side in the appeal made the contention that, if force generated by the collision is lesser than a certain degree, there would not be deployment of the airbags. Further, the airbag deployment depends on a number of factors including vehicle speed, angle of impact, density andstiffness of vehicles or objects which the vehicle hits in the collision. They also raised the issue of privity of contract with respect to the impleadment of the dealer similar to what has emphasized in the above-mentioned cases. All the said contentions were rejected and found without merit by the court in appeal.

The Hon'ble Supreme court reiterated the national consumer forum decision based on the application of '*res ipsa loquitur*': -

"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 defense 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."

The SC, then made its own observation in para 10 and 14 respectively: -

13 Hyundai Motor India Limited v. Shailendra Bhatnagar, Civil Appeal No. 3001 of 2022.

> *"A consumer is not meant to be an expert in physics calculating the impact of a collision on the theories based on velocity and force. In such circumstances, we do not find that there is any error in the findings of the two fora as regards there being defect in the vehicle" (para 10).*
>
> *"The safety description of the goods fell short of its expected quality. The content of the owners' manual does not carry any material from which the owner of a vehicle could be alerted that in a collision of this nature, the airbags would not deploy. Purchase decision of the respondent-complainant was largely made on the basis of representation of the safetyfeatures of the vehicle." (Para 14).*

In respect of Punitive damages awarded by the national consumer forums, the supreme court wassatisfied with the state forum order that the replacement of the car be made; the same was upheld by the NCDRC. The supreme court found the said relief to be justified despite the fact that the carwas repaired on insurance money.

To support its ratio, the court observed that the scheme of consumer protection Act, 1986 is such that the court can in accordance with Section 14 of the Act, award damages (punitive in nature) inexcess of what has been claimed by the complainant. This will include situations where damage can have potentially serious consequences especially like the ones suffered in motor accident cases. The purpose served by such damages is to create a deterrent effect on the manufacturers toinspect and screen the vehicle to identify fatal flaws in it, in order to avoid its sale.

VI. Conclusion

Thus, it is clear now that manufacturer-dealership arrangements are not one of principal-agent butof principal-principal one in circumstances where manufacturing defect could not be proved. Since, the manufacturing and safety standards have become stringent over the decades, it is nowadays unlikely that defects found in the vehicle assembly or its components are in the nature of manufacturing ones. The fault usually lies in the service rendered by the dealer duringmaintenance, repairing of the body parts or tweaking of the performance. The complainants mustbe careful in attributing the dealer's liability onto the manufacturer.

As far as evidence is concerned, job cards during maintenance service are essential piece of evidence. They contain the most crucial information regarding the car's performance in the

pre- service days. Another crucial piece of evidence is the third-party expert opinion. The number of kilometers a vehicle covers before the defect is first witnessed and informed to the service- workmen, also indicates the nature of the defect.

Generally, manufacturing defects showcase their defectiveness in the early days of purchase. In some cases, it is nearly impossible for the court/tribunals to determine the causation of malfunction which happens to be the principal cause of the defect in the vehicle. In such cases, the court resortsto the doctrine of 'res ipsa loquitur' where the court draws inference from the past actions of the defendant; in absence of a clear proof of negligence by the latter, it is highly likely that the presumption of negligence falls on the defendant, given that civil matters are determined on the basis of preponderance of probabilities. It is to be also reminded that 'res ipsa loquitur' is not a rule of evidence and therefore, it cannot constitute a principal argument on which the complainantmay rely to prove the culpability of the defendant.