

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

**RESERVED ON: 06.06.2025
PRONOUNCED ON: 25.06.2025**

REVISION PETITION NO. 1976 OF 2019

(Against the Order dated 17.07.2019 in Appeal No. 571/2018 of the
State Commission Maharashtra)

WITH

IA/14260/2019 (EXEMPTION FROM FILING ANNEXURES)

Mr.Ravindra Annappa Bindre,
R/o 1/3, B-26, Tapassya CHS Ltd.,
Sector-10, Near Balaji Temple Airoli,
Navi Mumbai 400 706.

... Petitioner

Versus

1. M/s. Royal Enfield A Unit of Eicher Motors Ltd.,
Having Show Room at Plot No.16, Sector-1, Nerul,
Sion-Panvel Highway Navi Mumbai 400 706.

2. M/s. Eicher Motors Ltd.
At 3rd Floor, Select Citywalk A-3,
District Center Saket New Delhi 110 017.

3. M/s. Ram Motorscycles Authorized Service Center
Of Royal Enfield Address at Plot No.42,
Sector-1, Shirvane Naka, Sion Panvel Highway Nerul,
Navi Mumbai 400 706.

... Respondents

BEFORE:

**HON'BLE AVM J RAJENDRA AVSM, VSM (Retd), PRESIDING MEMBER
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER**

For the Petitioner: Mr.Viraj Kadam, Advocate (VC)

For Respondents: Ms. Saumya Pandey & Mr. Varoon Biyani, Advocates

JUDGEMENT

Air Vice Marshal J. RAJENDRA, AVSM, VSM (Retd.)

1. This Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (State Commission') order dated 17.07.2019 in FA No. 571 of 2018 partly allowing the appeal and modifying the Addl Thane District Consumer Disputes Redressal Forum, Navi Mumbai ('District Forum') order dated 10.04.2018 in CC No. 44/2016.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the Complainant, are that he purchased a new Royal Enfield Thunderbird 350cc Motorcycle from Opposite Party (OP) No. 1 the dealer for Rs.1,54,762 on 19.10.2015. Upon delivery, he noticed sealant tape on the engine and was assured it was normal. However, oil leaked severely during the drive home. Despite multiple repair attempts by OP-3 (authorized service centre), including immediately after delivery, after the first free service and subsequent visits, the engine oil leakage problem persistently recurred, causing mental agony and rendering the motorcycle unusable for longer journeys. Alleging manufacturing defects and gross deficiency in service, he filed a consumer complaint before the District Forum, he

refused further repairs and demanded OP-1 & OP-2 (the manufacturer) replace the motorcycle or refund the full purchase price Rs.1,54,762 plus RTO charges Rs.9,878 and insurance costs Rs. 2,999 along with Rs.5,00,000 compensation and Rs. 25,000 litigation costs.

4. On being issued notice, OPs filed their Written Version and denied the allegations in full. While admitting the Complainant reported oil leakage which they attended to, including servicing on 27.10.2015, they asserted there was no leakage at the time of delivery and claimed all reported problems were properly resolved. They contended that the subsequent leakage might have resulted from the Complainant's failure to follow operational instructions. OP-1 and OP-2 specifically denied the motorcycle had any inherent manufacturing defect or that they committed any deficiency in service and therefore sought dismissal of the complaint. The District Forum, vide order dated 10.04.2018 allowed the Consumer Complaint and directed the OPs as under:

FINAL ORDER

- 1. The consumer complaint no. 44/2016 is partly allowed.*
- 2. It is hereby declared that the Opposite Party No 1 & 2 are guilty of deficiency in service.*
- 3. The Opposite Party No. 1 & 2 jointly and severally shall replace the vehicle in question with Brand New one with RTO passing and Insurance to complaint without charging any extra cost.*
- 4. In case it is not possible for Opposite Party no 1 & 2 to comply with the direction in clause 3 above the Opposite Party No 1 & 2 jointly and severally shall refund to complainant amount of Rs.1,54,762/- (the price of vehicle), Rs. 9878/- (RTO registration charges) and Rs.2999/- (Insurance) totalling to Rs.1,67,639.*

5. *The Opposite Party No 1 & 2 jointly and severally shall pay to the Complainant an amount of Rs. 25,000/- (Rs. Twenty Five Thousand only) towards compensation for mental agony.*
 6. *The opposite party No 1 & 2 jointly and severally shall pay to the complainant an amount of Rs.10,000/- (Rs. Ten Thousand only) towards litigation expenses.*
 7. *The Opposite Party No 1 & 2 shall comply with this order within a period of 45 days from the date of order, failing which they shall be liable to pay interest at rate of 9% per annum on the amount of compensation mentioned in clause No 5 above from the date of order till realisation.*
 8. *Complaint as against Opposite Party No 3 stands dismissed.*
 9. *The copy of order be sent free of cost to both parties.”*
5. Being aggrieved by the aforesaid order, the OP1&2 had filed Appeal No. 571 of 2018. The learned State Commission vide its Order dated 17.07.2019 partly allowed the Appeal with following directions:-

“ORDER

- 1. Appeal is partly allowed and the order passed by the Learned District Forum is hereby modified as under:**
- 2. The order passed by the Learned District Forum to replace the vehicle of complainant or to return back the amount of vehicle to complainant is hereby set aside.**
- 3. Appellants/opponent nos.1 & 2 are hereby directed to make the vehicle of complainant roadworthy by replacing engine of the vehicle and hand over possession of vehicle to complainant.**
- 4. As the vehicle is lying with opponents since November 2015 till today, whatever defects may have created in the vehicle of complainant, opponent nos.1 & 2 shall also cure the same by taking repairing charges about the same from complainant.**
- 5. The order of the Learned District Forum in respect of payment of costs and compensation along with interest to complainant is hereby confirmed.”**

6. Being dissatisfied by the Impugned Order dated 17.07.2019 passed by the State Commission, the Petitioner / Complainant has filed the instant Revision Petition.

7. The learned counsel for the Petitioner reiterated the facts and grounds of the Revision Petition, arguing that the State Commission erred in setting aside the District Forum's replacement order for a motorcycle with inherent oil leakage, a clear manufacturing defect evidenced by photographs, service station job cards, and the Respondent's own offer to replace the entire engine line, which negated the need for independent expert opinion. The State Commission further erred by travelling beyond the pleadings and prayers to direct the Petitioner to pay for repairs, despite the motorcycle remaining with Respondent No. 3 since November 2015 unresolved, which unjustly punished the Petitioner for withholding possession as protest. Given the undisputed defect, repeated failed repair attempts over 8 years, the motorcycle's unknown current condition, and the need for complete justice, restoring the District Forum's order for replacement is just and proper; thus, the impugned State Commission order should be set aside and the District Forum's order dated 10.04.2018 be restored.

8. On the other hand, the learned counsel for the OPs contended that the District Forum committed a grave material irregularity by erroneously holding the OPs liable for an inherent manufacturing defect

without adhering to the procedure mandated under Section 13 of the Act, 1986, particularly the absence of any requisite Expert Opinion to substantiate such a defect. In contrast, the State Commission, upon Appeal, rightly overturned the District Forum's order vide order dated 17.07.2019 in Appeal No. 571 of 2018, explicitly stating that a manufacturing defect cannot be presumed in the absence of expert witness evidence. Further, the State Commission correctly directed the petitioners to bear the repair costs arising from their failure to take delivery after service, while also directing the respondents to replace the engine free of cost in the interest of justice. The petitioners' act of abandoning the vehicle at the service centre, causing deterioration due to non-use, invoked the legal maxim 'nullus commodum capere potest de injuria sua propria' (no one can take advantage of their own wrong), making them responsible for resulting damages and costs during the idle period, a principle supported by precedent in **Manager, Premanchal Motors Pvt. Ltd. v. Ramdas & Ors., 2009 SCC Online NCDRC 45**. Crucially, consistent with this Commission's findings in **'Classic Automobiles Vs. Lila Nand Mishra and Ors., R.P. Nos.374-375 of 2005**, the burden of proving a manufacturing defect through cogent evidence, including expert evidence under Section 13(1)(c) of the Act, rests solely on the complainant; mere repeated repairs do not establish such a defect, and the District Forum failed in its duty to

appoint an expert suo moto if needed. Therefore, the State Commission correctly set aside the unsustainable District Forum's order and issued appropriate directions, rendering the present Revision Petition, filed without proper application of mind or legal acumen, devoid of merit. The learned counsel relied upon '*Manager, Premanchal Motors Pvt. Ltd. v. Ramdas & Ors.*, 2009 SCC Online NCDRC 45; *Classic Automobiles Vs. Lila Nand Mishra and Ors.*, MANU/CF/0086/2009; *R. Baskar V. D.N. Udani and Ors.*, MANU/CF/0351/2006; *M/s. Daya Anil Motors v. Mukesh Kumar and Anr.*, RP No.1243 of 2012, decided on 21.09.2022 by NCDRC; *Sukhvinder Singh vs. Classic Automobile & Anr.*, 2012 SCC OnLine NCDRC 790; *Sushila Automobile Pvt. Ltd. vs. Dr. Birendra Narain Prasad & Ors*, III (2010) CPJ 130 (NC); and *M/s. Royal Enfield v. Amand Deep*, RP No.2156 of 2017 dated 30.12.2024 by NCDRC.

9. We examined the pleadings and associated documents placed on records and rendered thoughtful consideration to the arguments advanced by the learned counsels for both the parties.

10. It is undisputed that the Complainant purchased a new Royal Enfield Thunderbird 350cc motorcycle from OP-1 (the dealer) for Rs.1,54,762 on 19.10.2015. Upon delivery, he noticed sealant tape on the engine, and he was assured it was normal. However, oil leaked severely during the drive home. Despite multiple repair attempts made by OP-3 immediately after delivery, after the first free service, and

subsequent visits, the engine oil leakage problem persistently recurred, causing mental agony and rendering the motorcycle unusable for longer journeys. He was not satisfied and considered such major defects in the engine within four months of purchase as a manufacturing defect and sought to return the Motorcycle and claimed refund of the amount paid by him. OPs specifically contended that such defects in the engine are normal and that during the course of its repair, OPs replaced certain parts free of charges. OPs also specifically contested that there is no manufacturing defect in the vehicle and further at no stage the Complainant has brought out anything substantial in the form of expert evidence under Section 13(1) of the Consumer Protection Act, 2019. It is clear that in the absence of specific facts or evidence establishing manufacturing defect in the vehicle the Complainant cannot demand replacement of vehicle which is otherwise using. As per Section 13(l)(c) of the Consumer Protection Act, 1986 which provides as under:

"(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, **the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory 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 Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum." [Emphasis added]

11. This Commission in ***Classic Automobiles Vs Lila Nand Mishra & Anr. I (2010) CPJ 235 (NC)*** has held as under:-

16. The District Forum could have appointed an expert of its own, based upon whose findings; a finding could be recorded with regard to the manufacturing defect. **In the absence of any expert evidence, merely on the fact that the car was repeatedly brought to the service station for repairs/rectifications, it cannot be held that there was a manufacturing defect in the car.** Whenever the car was brought to the service station, it was attended to by the petitioner. The petitioner is the service provider of the car and Counsel for complainant/respondent No. 1 was unable to show any deficiency on the part of the petitioner in attending to the car whenever it was brought to the petitioner's service station. [Emphasis added]

12. It is an admitted position that the motorcycle purchased on 19.10.2015 was under warranty when the oil leakage occurred within a short span of purchase. The repair was attended to by the OPs and the required parts were replaced free of charge to the Complainant. Undisputedly, the defect was only with respect to the engine oil leakage. When the Complainant was not satisfied despite attending to it on multiple occasions, as a measure of goodwill, the OPs offered engine replacement to the Complainant free of any charges. For some reasons, the Complainant did not permit the OPs to replace the engine and insisted for motorcycle replacement. It is, therefore, evident that the warranty obligation of OPs in providing free service with respect to motorcycle and replacement of defective parts during the period was complied with by OPs. In any case, there is nothing on record to indicate

that there has been any manufacturing defect in the motorcycle which entails consideration for replacement of the vehicle itself by the OPs. The impugned order is based upon the conclusion the learned District Forum arrived at on the basis of the frequent regime that were necessitated on the machine. In **Maruti Udyog Limited Vs Hansmukh Lakshmichand and Anr. 2009 SCC Online NCDRC 74**, this Commission held that repairs under warranty clauses do not necessarily establish inherent manufacturing defects. At the best the motorcycle had engine oil leakage, which the OPs addressed to a large extent free of charges and, when the Complainant was not satisfied, the OPs offered to replace the entire engine with a new one free of charge to the Complainant, as a measure of goodwill. He refused the same and in the course of time, the warranty lapsed. Clearly, no case is made out by the Complainant, which warrants replacement of the motorcycle itself.

13. It is a matter of record that the vehicle in question was purchased by the Complainant for Rs.1,54,762 on 19.10.2015. Thereafter, due to persisting oil leakage problems, disputes arose between the parties and the vehicle remained at the servicing centre (OP-3), since November 2015. Clearly, the Complainant has been deprived of use of the motorcycle in question for over 9 years. The leakage of oil and other complaints of the Complainant as well as the offer of the OPs to replace the engine free of any charges are not in dispute. The learned State

Commission vide order dated 17.07.2019 directed OP-1 and 2 to make the vehicle of the Complainant roadworthy by replacing the engine of the vehicle and handover possession to the Complainant. At the same, the learned State Commission has also directed that, as the vehicle is lying with the OP-3 since November 2015, whatever defects may have been created in the vehicle of the Complainant, OP-1 and 2 shall also cure the same by taking repairing charges with respect to the same from the Complainant. However, in view of the fact that the serviceability of the vehicle remained in question, the motorcycle remained with OP-3 since November 2015 and the fact that the Complainant was deprived of the use of new motorcycle purchased at such high value, we are of the considered view that the liability of costs towards bringing the motorcycle to roadworthy condition shall entirely be with OP-1 and 2.

14. in view of the foregoing, after due consideration of entire facts and circumstances of the case, the order of learned State Commission in FA No. 571 of 2018 dated 17.07.2019 is modified as follows:-

ORDER

- A. The Appellants/OP-1 and 2 shall jointly and severally replace the engine of the motorcycle in question as well as bring the vehicle to roadworthy condition, free of all charges to the Complainant, and hand over the possession of vehicle to Complainant within one month from the date of this order.**

- B. If the Complainant is not satisfied about the roadworthy condition of the motorcycle in question being handed over, he is at liberty to approach the District Forum by filing appropriate Application seeking appointment of an expert. On receipt of such Application, the District Forum shall forthwith appoint an expert to examine the said vehicle with direction to file a report on its condition and roadworthiness within one month from the date of the appointment. The costs towards obtaining the expert opinion and report shall be borne equally by both the parties.**
- C. On receipt of the expert opinion, if there are any observations with respect to condition/ serviceability of the said motorcycle, OP-1 and 2 shall jointly and severally take action necessary and bring the vehicle to roadworthy condition, within one month from the date of the said report. In the event of delay, OP-1 and 2 are liable to pay Rs.5000 per month as compensation to the Complainant.**
- D. Considering the circumstances of the case, OP-1 and 2 shall jointly and severally pay the Complainant Rs.50,000 as compensation for mental agony; and Rs.25,000 as costs, which shall be paid within one month from the date of this order. In the event of delay, the same shall be paid along with simple interest @ 9% per annum till the date of final payment.**

15. Revision Petition No.1976 of 2019 is disposed of with above directions.

16. All pending applications, if any, are also disposed of accordingly.

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

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(ANOOP KUMAR MENDIRATTA, J.)
MEMBER

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