

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 24.03.2022

Date of Hearing: 04.07.2024

Date of Decision: 07.07.2025

COMPLAINT CASE NO. 50/2022

IN THE MATTER OF

MRS. VEENA DEVI,
(THROUGH POA HOLDER MR. AMIT VARSHNEY)
R/O H.N. 12 A, BEHIND MEELROSE FACTORY,
NEAR KAMAKHYA MANDIR, KOIL,
ALIGARH, U.P.-202001.

(Through: Mr. Prakhar Dixit and Mr. Siddharth Singh, Advocates)

...Complainants

VERSUS

1. M/S. SCANDIA MOTORCARS PVT. LTD.,
B1/G3, MOHAN CO-OPERATIVE INDUSTRIAL ESTATE,
MATHURA ROAD, NEW DELHI-110044.
E-MAIL ID: crm@scandiavolvocars.com

(Through: Mr. Rajendra Mal Tatia and Mrs. Madhurima Tatia, Advocates)

...Opposite Party No. 1

2. M/S. VOLVO AUTO INDIA PVT. LTD.,
THROUGH PAYAL KHANNA, DIRECTOR-LEGAL AND COMPLIANCE,
BPTP PARK CENTRA, SECTOR-30,
NH-8, GURGAON-122001, HARYANA.
E-MAIL ID: payal.khanna@volvocars.com

(Through: King Stubb and Kasiva, Advocates)

...Opposite Party No. 2

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Prakhar Dixit and Mr. Samuel Mashish, counsel for the Complainant,
E-mail: mail@synclegal.co.in.

Mr. RM Tatia, counsel for the Opposite Party No. 1 (through VC).

Ms. Shailja Singh and Ms. Deepika Kumari, counsel for the Opposite Party
No. 2 (through VC).

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, (PRESIDENT)**JUDGMENT**

1. The present Complaint has been filed before this Commission by the Complainant alleging deficiency in service and unfair trade practice on the part of Opposite Party No. 1 to 6 and have prayed for the following reliefs:-

- i. *Direct the Defendants to refund the amount is Rs. 61,25,379/- (Sixty One Lakhs Twenty Five Thousand Three Hundred Seventy Nine only) paid towards the purchase, logistics, servicing/repair of the car along with interest on loan being paid by the Complainant.*
- ii. *Direct the Defendants to pay damages amounting to Rs. 10,00,000/- for the negligence on and for jeopardizing the life and limb of the Complainant, breaching contractual duties, deficiency in services, involving in unfair trade practices for falsely representing that the services are of a particular standard, quality or grade, when they were substandard/deficient.*
- iii. *Direct the Defendants to compensate the Complainant with a sum of Rs. 5,00,000/- (Five Lakhs Rupees) for the intentionally causing damage/harm to the mental peace of the Complainant, inflicting mental agony and harassment of the Complainant.*
- iv. *Cost of the litigation may be awarded in favour of the Complainant.*
- v. *Any other relief / reliefs which this Hon'ble Forum may deem fit and proper under the circumstances of the case may be passed in favor of the Complainant and against the opposite party.*

2. Brief facts necessary for the adjudication of the present Complaint are that the Complainant purchased a “Volvo CX60 D5” car from the dealer/Opposite Party No. 1 for a total consideration of Rs. 59,90,000/- (Rupees Fifty-Nine Lakh Ninety Thousand Only) alongwith Rs. 89,000/- (Rupees Eighty-Nine Thousand Only) towards logistics on 23.11.2020. On 15.09.2021, the car broke down again, and it was found that the engine was not cranking due to fuel adulteration. Thereafter, the fuel rail and one injector were replaced, and the car was returned on 22.10.2021. The Opposite Party No.1 waived off 50% of the total repair cost to be paid by the Complainant towards the replaced parts. On 10.12.2021, the car broke down again and was not starting. The Opposite Party No. 1, on 16.12.2021, again informed the Complainant that injector nos. 3 & 4 were found to be faulty due to fuel adulteration, which caused the said breakdown on 10.12.2021. The Complainant inquired about the same problem arising twice within 2 months, and was again offered a waiver of 50% on the expenses of the repair on 22.12.2021, with the Complainant having to pay Rs. 46,369/- (Rupees Forty-Six Thousand Three-Hundred and Sixty-Nine Only). The Opposite Party No. 1 refused to share the certified lab report with the Complainant regarding the fuel adulterant causing the aforesaid problems in the car, leading the Complainant to believe that the car in question had a manufacturing defect. Aggrieved by the aforesaid submissions and contentions, the Complainants have approached this Commission.
3. Written Statement has been filed by the Opposite Party No. 1, denying all the contentions and allegations of the Complainants. It is submitted that the car in question had been in an accident on 29.01.2021, after which the Complainant sent the vehicle to the service center of the Opposite Party No. 1. Further, it is submitted that the Opposite Party No. 1 only paid an amount of Rs. 2,000/- (Rupees Two Thousand Only) towards a total invoice amount Rs. 1,15,028.69/- (Rupees One Lakh Fifteen-Thousand Twenty-Eight and Sixty-Nine Paise Only) from the Insurance Company. It is submitted that the fuel sample was taken from the car on 16.09.2021, which was contaminated with water or a water-like

substance. It is further submitted that the Opposite Party No. 1 replaced the fuel distribution pipe, fuel filter and one injector, and that a test drive of 60 km. revealed that the car in question was running perfectly. Additionally, it is submitted that the Opposite Party charged only 50% towards the total cost of repairs and replacements of the aforementioned parts, and the car ran smoothly for 1.5 months for a distance of 3870 km. On 11.12.2021, the car was brought to the service station of the Opposite Party No. 1, and informed the Complainant of the low injector pressure with problems in 2 injectors vide E-mail dated 16.12.2021. It is further submitted that the abovementioned problem with the injectors is also due to fuel adulteration. The Opposite Party No. 1 has further submitted that the Complainant was offered 50% support on parts, with the Complainant having to pay Rs. 46,369/- (Rupees Forty-Six Thousand Three-Hundred and Sixty-Nine Only). It is submitted that the said repairs are not covered under the warranty as the warranty excludes cases of fuel adulteration, as the same is not a manufacturing defect. The Opposite Party No. 1 has submitted that 2 injectors have been replaced and that the car is running fine. It is also submitted that the Opposite Party No. 1 has not received any communication regarding the approval of the repair job, nor has the Complainant picked up the car from the service center of the Opposite Party No. 1, with the current service of the car also being due. Pressing the aforesaid contentions and submissions, the counsel for the Opposite Party No. 1 has prayed for the dismissal of the present Complaint.

4. Written Statement has been filed by the Opposite Party No. 2, denying all the contentions and allegations of the Complainants. The Opposite Party No. 2 has submitted that the Complainant has also filed a Recovery Suit CS (Comm) No. 1168 of 2022 on 01.12.2022 before the Commercial Court at the Saket District Court for the recovery of an amount of Rs. 51,50,000/- (Rupees Fifty-One Lakh Fifty Thousand Only) for the same cause of action in the present case. It is further submitted that the manufacturer/Opposite Party No. 2 is on a principal-to-

principal basis with the Opposite Party No. 1, wherein, the dealer/Opposite Party No. 1 purchases vehicles at full price from the manufacturer/Opposite Party No.2, therefore the Opposite Party No. 2 is not responsible for the acts and omissions of the Opposite Party No. 1, as there has been a misjoinder of the Opposite Party No. 2 due to defamatory articles and videos posted on news websites and YouTube respectively. Pressing the aforesaid submissions, the counsel for the Opposite Party No. 2 has prayed for the dismissal of the present Complaint.

5. Despite reminders, Rejoinder has not been filed on behalf of the Complainant.
6. Thereafter, Evidence by way of Affidavit has been filed by the parties and the same has been considered.
7. Written Arguments have been filed by the Complainant, wherein the contents of the Complaint have been reiterated. The Complainant has placed reliance on the following judgments in support of their case:

- A. ***Deepak Aggarwal vs. Volvo Auto India Pvt. Ltd. and Ors.*** as reported in ***I (2022) CPJ44 (UT Chd.)***
- B. ***Krishna Kumar and Anr. vs. Sr. Supdt. Of Police and Ors.*** as reported in ***1998 Cri LJ 3806***
- C. ***Complaint Case No. 5 of 2004*** titled ***S. Khushwant Singh Chatha vs. Daimler Chrysler India (P) Limited*** as decided on ***12.12.2005***
- D. ***Revision Petition No. 446 of 2013*** titled ***Honda Siel Car India Ltd. vs. Rohit Jain and Ors.*** as decided on ***31.03.2016***

8. Written Arguments have been filed on behalf of the Opposite Party No. 1 wherein, the contents of the Reply filed by the Opposite Party No. 1 have been reiterated. The Opposite Party No. 1 has relied on the following judgments in support of its case:

- A. ***Revision Petition No. 1258 of 2015*** titled ***Force Motors Ltd. vs. Shibu Bag & Ors*** decided on ***21.07.2020***
- B. ***Special Leave Petition (C) Nos. 21178-21180 of 2009*** titled ***C.N. Anantharam vs. Fiat India Ltd. And Ors.*** as decided on ***24.11.2010***
- C. ***Skoda Auto India Ltd. vs. Bhawesh Nanda II*** as reported in

(2016) CPJ 217 (NC)

- D. Chandeshwar Kumar vs. Tata Engineering Loco Motive** as reported in **I (2007) CPJ 2 (NC)**
- E. Subhash vs. Gautam Automobiles III** as reported in **(2014) CPJ 564 (NC)**
- F. Punjab State Power Corporation Ltd. vs. M/s. Shree Polyphase Meters (India) Pvt. Ltd.** as reported in **2012 (1) CPR 58 (NC)**
- G. Revision Petition No. 1115 of 2012** titled **Khanna Automobiles, Opposite Aggarsen College & Another vs. Shri Rajesh Kumar (LNIND 2013 NCDRC 286)** as decided on **23.04.2013**
- H. Revision Petition Nos. 674, 676 and 677 of 2004** titled **Maruti Udyog Limited vs. Nagendra Prasad Sinha and Ors.** as decided on **04.05.2009**
- I. Shiv Prasad Paper Industries vs. Senior Machinery Company** as reported in **2006 CTJ 231 CP (NCDRC)**
- J. Sukhwinder Singh vs. Classic Automobiles (2013) CPJ 47 NC**
- K. Revision Petition No. 4803 of 2012** titled **Raj Bala vs. Managing Director, Skoda Auto India Pvt. Ltd. & Anr.** as decided on **23.10.2023**

9. Written Arguments have been filed on behalf of the Opposite Party No. 2, wherein, the contents of the Written Statement have been reiterated. The Opposite Party No. 2 has relied on the following judgments in support of its case:

- A. Indian Oil Corporation vs. Consumer Protection Council, Kerala & Anr.** as reported in **(1994) 1, Supreme Court Cases 397**
- B. Revision Petition No. 1258 of 2015** titled **Force Motors Ltd. vs. Shibu Bag & Ors** decided on **21.07.2020**
- C. Special Leave Petition (C) Nos. 21178-21180 of 2009** titled **C.N. Anantharam vs. Fiat India Ltd. And Ors.** as decided on **24.11.2010**
- D. Skoda Auto India Ltd. vs. Bhawesh Nanda II** as reported in **(2016) CPJ 217 (NC)**
- E. Chandeshwar Kumar vs. Tata Engineering Loco Motive** as

reported in *I (2007) CPJ 2 (NC)*

F. *Subhash vs. Gautam Automobiles III* as reported in (2014) *CPJ 564 (NC)*

G. *Punjab State Power Corporation Ltd. vs. M/s. Shree Polyphase Meters (India) Pvt. Ltd.* as reported in 2012 (1) *CPR 58 (NC)*

H. *Revision Petition No. 1115 of 2012* titled *Khanna Automobiles, Opposite Aggarsen College & Another vs. Shri Rajesh Kumar (LNIND 2013 NCDRC 286)* as decided on 23.04.2013

I. *Revision Petition Nos. 674, 676 and 677 of 2004* titled *Maruti Udyog Limited vs. Nagendra Prasad Sinha and Ors.* as decided on 04.05.2009

J. *Shiv Prasad Paper Industries vs. Senior Machinery Company* as reported in 2006 *CTJ 231 CP (NCDRC)*

K. *Sukhwinder Singh vs. Classic Automobiles (2013) CPJ 47 NC*

L. *Revision Petition No. 4803 of 2012* titled *Raj Bala vs. Managing Director, Skoda Auto India Pvt. Ltd. & Anr.* as decided on 23.10.2023

M. *Canara Bank & Ors. vs. Debasis Das and Ors* as reported in *AIR 2003 SC 1561*

N. *Civil Appeal No. 5759 of 2009* titled *SGS India Ltd. vs. Dolphin International Limited* as decided on 06.10.2021

O. *Maruti Udyog Ltd. vs. Susheel Kumar Gabgotra and Anr.* as reported in *AIR 2006 SC 1586*

10. We have heard the counsel appeared on behalf of the parties and perused the material available on record.

11. The fact that the Complainant purchased a “Volvo XC60 D5” car from the Opposite Party No. 1 on 23.11.2020 is evident from the Tax Invoice of the car alongwith the logistics charges dated 23.11.2020 (annexed as *Annexure A-2 on page nos. 45-46 alongwith the Complaint*). Further, the Complainants have made a total payment of Rs. 60,79,000/- (Rupees Sixty Lakh Seventy-Nine Thousand Only) towards the car, which is also evident from the aforementioned

Tax Invoice, and is not disputed by the parties.

12. The ***only question*** for consideration before us is ***whether the Opposite Parties No. 1 & 2 are deficient in providing their services to the Complainant.***

13. To deal with this issue, we deem it necessary to Section 2(11) of the Consumer Protection Act, 2019, which provides as under:

“(11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes-

(i) any act of negligence or omission or commission by such person which causes loss or injury to the customer, and

(ii) deliberate withholding of relevant information by such person to the consumer’;”

14. The definition of “deficiency” under Section 2(11) of the Consumer Protection Act, 2019 referred to above clarifies that any dereliction with respect to any fault, imperfection, shortcoming or inadequacy in performance required by law in pursuance of a contract of service on the part of the service provider amounts to deficiency in service.

15. On perusal of record, we find that no expert has been appointed after the inspection of the car in question. The Complainant has submitted that the problems arising in the fuel rail and injectors of the car, two times in the close proximity of one year since the purchase, is due to a manufacturing defect. However, without any expert report, it cannot be concluded that the car in question has manufacturing defects. Therefore, it is clear that the Complainant has failed to prove that the said defects in the car are “manufacturing defects”.

16. At this juncture, we deem it necessary to refer to the judgment of the Hon'ble National Commission in ***Revision Petition No. 2622 of 2012*** titled ***M/s. Honda Cars India Ltd. vs Jatinder Singh Madan*** as decided on ***11.10.2013***, wherein it was held as under:

“7. Learned Counsel for the petitioner submitted that there was no manufacturing defect in the vehicle; even then, learned State Commission wrongly allowed complaint and directed to replace steering etc., though, it had already been replaced twice before filing complaint. Perusal of record reveals that steering gear box was replaced twice before filing complaint and again learned State Commission vide impugned order directed petitioner to replace the steering wheel assembly and other connected parts without any expert report or opinion. We are not inclined to decide this aspect whether by taking vehicle to workshop for 4 to 5 times it would amount to manufacturing defect or not because we have already held that complainant ceases to be a consumer under the Consumer Protection Act and in such circumstances; complaint is liable to be dismissed on this sole count.”

17. From the above dicta, it is clear that the expert report or opinion is necessary for establishing manufacturing defect, and that the number of times that a vehicle has been taken to a workshop does not amount to a manufacturing defect.

18. In the present case before us, we find that due to the failure of the Complainant to prove manufacturing defect in the said car in question as alleged by the Complainant, the manufacturer/Opposite Party No. 2 cannot be held liable for deficiency in service or to compensate the Complainant with respect to any repairs or replacements of parts in the said car.

19. Keeping in view the facts of the present case and the extensive law as discussed above, we find no deficiency in service on the part of the Opposite Party No. 1 in replacing parts within a close proximity of 3 months, nor is there any

manufacturing defect proven on the part of the Opposite Party No. 2. Therefore, the Opposite Parties are not liable to refund the cost of the car alongwith other expenses as claimed by the Complainant. ***Consequently, the present Complaint stands dismissed with no order as to costs.***

20.Applications pending, if any, stand disposed of in terms of the aforesaid Judgement.

21.The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.

22.File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

Pronounced On: **07.07.2025**

LR-DK