

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8447 OF 2011

NEW HOLLAND TRACTOR(I) P.LTD.

Appellant(s)

VERSUS

SHRI MOHAN LAL PATIDAR & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO. 8448 OF 2011

WITH

CIVIL APPEAL NOS. 9682-9683 OF 2011

O R D E R

The present batch of appeals arise from a common order dated 12.05.2009 passed by the National Consumer Disputes Redressal Commission, New Delhi (referred to as the 'National Commission') disposing off two First Appeals Nos.721 and 726 of 2003.

The parties shall be referred to by their original party position before the State Consumer Disputes Redressal Commission, Bhopal (hereinafter referred to as the 'State Commission'). The complainant purchased a tractor from opposite party no.3 for the price of Rs.6,10,850/- on 15.12.2000. The next day he purchased a Back-Hoe Dozer machine from opposite party no.1 for Rs.4,40,220/- and had it installed on the tractor. The dealer, opposite party no.2, was common to both

the opposite parties. The Complainant faced persistent problems of oil leakage in the tractor, despite repeated repairs, leading to institution of Complaint Case No.73 of 2001 by him before the State Commission.

The State Commission by order dated 13.08.2003 held that the tractor and the Back-Hoe Dozer were incompatible. Opposite party nos.1 and 3 were therefore directed to refund the full purchase price along with 12% interest to the complainant. The dealer was directed to pay compensation of Rs.10,000/-.

The opposite party no.1 and opposite party no.3 filed separate appeals before the State Commission. The Commission opined that in absence of an expert opinion having been called for by the State Commission under Section 13(1)(c) of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'), it would be just and equitable to direct refund of 50% of the cost of the Back-hoe Dozer Machine and the tractor, by opposite party nos.1 and 3 respectively, with interest @ 9% along with costs of Rs.10,000/-. The complainant, opposite party nos.1 and 3 then preferred the present appeals. Recovery of the awarded amount was stayed in the present proceedings.

Sri Ashwani Kumar, learned counsel for the complainant, submitted that the complainant had purchased the machines after taking loan from the Bank with interest. Having been unable to use the combination and thus repay the installments, he had to face debt recovery proceedings also. The combination was purchased by the complainant on the persuasion of the dealer,

who was common to both opposite party nos.1 and 3 that the machines were compatible. There was apparent authority in the dealer for representational purposes with regard to compatibility. Additionally, opposite party no.1 had expressly represented that the two machines were compatible as evident from their quotation dated 09.11.2000. The usage in combination did not work leading to repeated leakage of oil from the trumpet housing of the tractor despite repeated repairs by opposite party no.3. The purpose for which the combination had been purchased could not be fulfilled, causing loss to the complainant. The National Commission held that both opposite party nos.1 and 3 were blaming the product of the other as being incompatible. No further evidence was required that they had both misrepresented to the complainant with regard to the compatibility of the two machines, and on which persuasion the complainant had made the purchases. The complainant had also submitted an expert report with regard to the incompatibility of the two machines. The National Commission therefore ought not to have reduced the quantum of compensation as awarded by the State Commission.

Sri K.V. Vijaykumar, learned counsel for opposite party no.1, submitted that there was no defect in the Back-Hoe Dozer Machine sold to the complainant, which was compatible with the tractor model purchased by the complainant. The oil leakage was attributable solely to the fault in the tractor, leading to loosening of the bolts due to use, and which could not be

rectified despite repeated repairs by opposite party no.3. It was emphasised that the Back-Hoe Dozer machine had been sold to several other tractor users and there had been no complaints of incompatibility. The expert opinion produced by the complainant *suo-moto* had been disputed and an application had been filed under Section 13(1)(c) of the Act before the State Commission to call for an expert report, on which unfortunately no orders had been passed. Both the State Commission and the National Commission have erred in passing the impugned orders on basis of assumptions and presumptions which are consequentially not sustainable.

Sri Vijay Kumar, learned counsel for opposite party no.3, submitted that there existed no fault with the tractor. The complainant failed to follow the instructions in the user manual and tighten the bolts of the trumpet housing after certain hours of usage. The tractor was attended to at the workshop and the complainant was advised to tighten the bolts at intervals despite which he did not do so leading the problem to persist. Fault with the tractor occurred primarily because of the failure of the consumer to follow the instructions given to him requiring tightening of bolts at regular intervals after hours of usage. The *suo-moto* report submitted by the complainant cannot be considered conclusive as it had been disputed. Similar argument was made with regard to Section 13(1)(c) of the Act. In absence of such report, the fixation of responsibility on the opposite party no.3 for what was

essentially the fault of the complainant, is not justified. The common grievance by opposite party nos.1 and 3 was that in the facts of the case, the finding of unfair trade practice and misrepresentation against them was not only uncalled for but wholly unjustified also.

Sri Rakesh Kumar-I, learned counsel for opposite party no.2, submitted that the dealer is not responsible if the product manufactured by opposite party nos.1 and 3 have ultimately turned out to be incompatible especially when the complainant was also at fault in not having followed instructions.

We have heard learned counsel for the parties at length. The complainant purchased the machines having taken loan from the Bank with interest component. Section 13(1)(c) of the Act is as follows:

“13. Procedure on admission of complaint.-

(1) The District Forum shall, on admission of a complaint, if it relates to any goods,-

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(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 suffer 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;"

The question arising for consideration before the State Commission was purely technical in nature requiring expertise. We are in concurrence with the National Commission that an expert technical report ought to have been called for by the State Commission. The technical report dated 19.04.2001 by one Shri Sanjeev Srivastava produced by the complainant *suo-moto* was not pursuant to any direction by the State Commission under Section 13(1)(c). The issue whether it could have been taken into consideration in absence of any other report does not arise for consideration since it was specifically disputed by the opposite party no.1 by affidavit dated 15.11.2002 requesting the State Commission to call for an expert report. Unfortunately, no orders were passed on the application. The conclusions of the State Commission with regard to incompatibility between the two machines, are based exclusively on the report dated 19.04.2001.

The State Commission, in our opinion, has rightly opined of a representation on behalf of the opposite parties with regard to the compatibility of the two machines, on basis of the opposite party no.2 being a common dealer and which is reinforced by the quotation of the opposite party no.3 dated 09.11.2000.

The National Commission has concluded that both opposite party nos.1 and 3 were blaming the other with regard to the issue of compatibility, trying to shift the blame to each

other. In this imbroglio, especially in the absence of an expert report, considering that complainant was ultimately unable to utilize the combination for the purposes it was bought, and on the contrary was saddled with a recovery proceeding by the Bank, we find no reason to interfere with the equitable reasoning of the National Commission, and which in our opinion is a reasonably possible view, to award 50% of the cost of the two machines proportionately as quantified by it.

Before we part with the case, we must take note of the submissions made on behalf of the opposite party nos.1 and 3 with regard to the observations made of mis-representation and unfair practices adopted by them. We think, that these observations were not appropriate in the facts of the present case. We therefore expunge the observations.

The appeals are dismissed.

.....J.
(Navin Sinha)

.....J.
(Krishna Murari)

New Delhi,
February 11, 2021

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 8447/2011

NEW HOLLAND TRACTOR(I) P.LTD.

Appellant(s)

VERSUS

SHRI MOHAN LAL PATIDAR . & ORS.

Respondent(s)

([PART HEARD BY HON. NAVIN SINHA AND HON. KRISHNA MURARI, JJ.]
[1st item in regular hearing])

WITH

C.A. No. 8448/2011 (XVII-A)

C.A. No. 9682-9683/2011 (XVII-A)

Date : 11-02-2021 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE KRISHNA MURARI

For the Parties (s)

Mr. Vishwajit Singh, AOR

Mr. K. V. Vijayakumar, AOR

Mr. Rakesh Kumar-I, AOR
Mr. Harsh Upadhyay, Adv.

Mr. K. V. Vijayakumar, AOR
Ms. A. Jaswanthi, Adv.

Mr. Abhinav Ramakrishna, Adv.

Mr. Ashwani Kumar, AOR
Mr. Vishal Bhatnagar, Adv.
Mr. Puneet Sharma, Adv.
Ms. Iti Sharma, Adv.
Ms. Kumud Nijhawan, Adv.

Mr. Vishwajit Singh, AOR

Mr. Vijay Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeals are dismissed in terms of signed order.

Pending application(s), if any, shall also stand disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(DIPTI KHURANA)
COURT MASTER (NSH)

(signed order is placed on the file)