

**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)

1. 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

1. SHAILENDER BHATNAGAR  
48 A, JYOTI APARTMENTS, ROHINI SECTOR-14  
NORTH WEST  
DELHI

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. C. VISWANATH, PRESIDING MEMBER**

**For the Appellant :** Mr. Rajeev Kumar Yadav, Advocate  
Mr. Divjot Singh Bhatia, Advocate

**For the Respondent :** In Person

**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. Alongwith 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.

2. Case of the Complainant is that on 21.08.2015 Complainant/Respondent purchased a vehicle, Creta 1.6 VTVT SX+ bearing Engine No.95120, Chasis 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.”*

3. 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.

4. 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.”*

5. 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.

6. 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.

7. 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.

8. 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.

9. On 21.08.2015, Complainant purchased a vehicle, Creta 1.6 VTVT SX+ bearing Engine No.95120, chasis 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.

10. 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.

11. 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.”

12. 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.

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**C. VISWANATH**  
**PRESIDING MEMBER**