

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

27th day of January 2025
CC 545/18 filed on 10/10/2018

- Complainant : Sunil Kumar, S/o. Ramachandran, Thekkooott House,
Mulamkunnathukavu P.O., Gramala, Killannur
Village, Thrissur Taluk.
(By Adv. V.S Preetha, Thrissur)
- Opposite Parties : 1. 'Nokia' Mobile Company Ltd., The Care
Manager, Address- T.N.S Mobile India
(P) Ltd., Flat No. 820A, 8th Floor, Naurang
House, 21, KasturbaGandi Marg,
New Delhi – 110 001, India.
(By Adv. K. Vinod Kumar)
2. 'Kannan's Digital Trends' SN Tower, Opp – Saroja
Hospital Shornur Road, Thrissur – 680 001.
(Ex-parte)

FINAL ORDER

By Sri.Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of the Consumer Protection Act 1986. The complainant purchased a mobile phone (Nokia-2TA 1011 DS) from the second opposite party dealer on 29/06/2018 vide invoice No. 0430, for a sum of Rs. 6,700/- (Rupees six thousand and seven hundred only). The complainant claims that he purchased the said mobile phone, placing reliance on the second opposite party's assurance regarding its robustness and fault free performance and that the same bears a warranty for a period of one year. The first opposite party is statedly the manufacturer of the mobile phone in question. He also states that he was lured by the advertisement made by the

first opposite party, as well. But soon after the purchase, the phone allegedly started exhibiting problems which made it unworthy of use. Consequently, as per the instructions of the second opposite party dealer, the phone was entrusted for repair with M/s. Thrissur Mobile Care, first floor, Achus Centre, Poothole, Near Kerala Ice Factory Thrissur, on 30/07/2018, 11/08/2018 and 22/09/2018, but was not ever productively repaired. The repeated complaints in this regard that the complainant made with the second opposite party dealer statedly evoked no result. The complainant alleges that the fault on the part of the opposite parties rendered his purchase of the phone unproductive. The complainant alleges unfair trade practice and cheating on the part of the opposite parties and seeks a direction to refund the cost of the mobile phone, apart from other reliefs of compensation and costs.

2) NOTICE :

The Commission having issued notice to the opposite parties, the first opposite party filed their written version before the Commission. The proceedings against the second opposite party are seen set ex-parte owing to their having not filed the written version before the Commission.

3) Version of the First Opposite Party:

The first opposite party denies all the allegations raised by the complainant and alleges that the defects exhibited by the phone were attributed to its mal-use by the complainant.

4) Evidence:

The complainant produced the mobile phone which was marked as MO1 and also documentary evidence that had been marked Ext. A1 to A4, apart from affidavit and notes of argument. The first opposite party adduced no evidence

on their part, but version. The proceedings against the second opposite party being ex-parte, no evidence produced on their part.

5) Deliberation of Facts and Evidence:

The Commission has intensively evaluated the facts and evidence of the case. Ext. A1 is the Invoice No. 0430 dated 29/06/2018 issued by the second opposite party to the complainant, in respect of the sale of a mobile phone “Nokia 2TA 1011 DS, 353405091909659”, for a sum of Rs. 6,700/- (Rupees six thousand and seven hundred only). Ext. A2 is Delivery note with job sheet No. 981465550/180730/009 dated 30/07/2018 issued by Thrissur Mobile Care, 1st Floor, Achus Centre, Poothole, Near Kerala Ice Factory, Thrissur, to the complainant in respect of repair of the MO1 Mobile Phone. Ext. A3 is Delivery Note with Job sheet No. 981465550/180811/008 dated 11/08/2018 issued by Thrissur Mobile Care, 1st Floor, Achus Centre, Poothole, Near Kerala Ice Factory, Thrissur, to the complainant in respect of repair of the MO1 Mobile Phone. Ext. A4 is Delivery note with Job sheet No. 981465550/180922/007 dated 22/09/2018 issued by Thrissur Mobile Care, 1st Floor, Achus Centre, Poothole, Near Kerala Ice Factory, Thrissur, to the complainant in respect of repair of the MO1 Mobile Phone. MO1 is mobile phone with declarations “Model TA-1011, made in India, IMEI 1:- 353405091909659”, amongst others.

6) Points to be deliberated:

- (i) Whether the mobile phone in question suffers any manufacturing defect, as alleged?
- (ii) Whether the act of the opposite parties is tantamount to deficiency in service and whether the opposite parties had adopted any unfair trade practice?
- (iii) Whether the complainant is entitled to get refund of the purchase price he paid, and also any compensation from the opposite

parties? If so the quantum of compensation?

(iv) Costs?

6) Point No.(i)

Ext. A1 invoice reveals that the complainant purchased the mobile phone in question from the second opposite party on 29/06/2018, paying them a sum of Rs. 6,700/- (Rupees six thousand and seven hundred only). Ext. A2 delivery note reveals that the MO1 mobile phone exhibited the fault of '416 Start-Up-SW-failure-reflash', on 30/07/2018. Ext. A3 and Ext. A4 notes reveal that the MO1 phone repeatedly exhibited the same fault of '416 Start-Up-SW-failure-reflash' on 11/08/2018 and 22/09/2018, as well. The Exts A2, A3 and A4 delivery notes unambiguously bear the entry that the MO1 phone was under warranty at the respective points of time while it was entrusted to the service centre for repair. It is thus visible that the mobile phone in question started exhibiting these faults within few days of its purchase at a cost of Rs. 6,700/- (Rupees six thousand and seven hundred only). Ext. A2, A3 and A4 documents eloquently express that the mobile phone in question went faulty at various points of time during the period of its warranty, that too very shortly after its purchase. The recurring fault exhibited by the mobile phone, that too in a few days of its purchase will go to prove that the mobile phone in question suffered manufacturing defect. Rather than baldly pleading that the defects exhibited by the phone are attributed to the mal-use of the same by the complainant, the first opposite party manufacturer has not adduced any plausible evidence at all, to substantiate this contention of theirs. It is trite law that the onus to prove lies with the complainant. In the case at hand, the complainant succeeded in establishing his contention that the MO1 mobile phone suffered from an inherent defect. If the complainant so discharges his initial onus, the burden would then shift to the opposite party. In the instant case, while the complainant succeeded in shifting the burden to the first opposite party

manufacturer, the first opposite party failed to unambiguously prove their contention regarding the attribution of the defect to the alleged mal-use by the complainant. The inherent nature of the defect of the phone in question is thus, proved, unequivocally.

Point No.1 is, therefore, proved in favour of the complainant.

7) Point No.(ii)

The documents produced as evidence reveal that the complainant had gone to the service centre several times for repairs of the mobile phone in question. In our view, there is no necessity for a new mobile phone to be taken to the service centre on several occasions for repairs, within a few days of its purchase, unless the instrument is inherently defective. The manufacture and sale of a defective mobile phone to a consumer constitute an unfair trade practice. Besides, the second opposite party could not take any steps to liaison with the first opposite party manufacturer with a view to productively curing the defects of the mobile phone in question. The dealer is not a mere cash collection centre, whose duties and responsibilities culminate with the sale of a product to the end user. The dealer cannot treat the consumer as a mere 'cash cow'. The dealer of a product does have the bounden duty to liaison with the manufacturer and to facilitate the productive repair of the product which went perpetually faulty, shortly after its purchase. The second opposite party dealer, in the instant case, appears to have failed to discharge this bounden duty of theirs, which makes them also liable for the fault and imperfection suffered by the complainant. Therefore, the deficiency in service and adoption of unfair trade practice on the part of both the opposite parties are obvious.

Thus point No.2 is also proved in favour of the complainant.

8) Point No. (iii) and (iv)

The person who purchases a mobile phone at a price of Rs. 6,700/- (Rupees six thousand and seven hundred only) would not be satisfied, if it is found defective in a few days of its purchase. The second opposite party dealer had not even cared to file their written version before the Commission. The indifferent attitude on the part of both the opposite parties unveils their neglect and lack of concern, towards redressing the grievances of their consumers.

If a new mobile phone recurrently exhibits the same trouble in a few days of its purchase, the consumer would undoubtedly be dissatisfied. Indifferent and neglectful behaviour on the part of the opposite parties including the manufacturer in such a context, will leave the consumer helpless, bewildered and shocked. It is pertinent to recollect at this point that the very necessity of Consumer Protective Laws in our country, arose mainly due to such helpless position of the consumers. In the case at hand, the complainant had suffered a lot of inconvenience, mental agony and hardship, as claimed, due to the deficiency in service and adoption of unfair trade practice on the part of the opposite parties. Hence, we are of the considered view that the complainant is entitled to get a refund of the purchase price of the mobile phone, ie., Rs. 6,700/- (Rupees six thousand and seven hundred only), a sum of Rs. 5,000/- (Rupees five thousand only) towards compensation for the inconvenience, mental agony and hardship he underwent, and a sum of Rs. 5,000/- (Rupees five thousand only) towards cost of litigation.

In the result, the complaint is allowed and the opposite parties are jointly and severally directed to:

- a) refund to the complainant the invoice price of the mobile phone ie.,
Rs. 6,700/- (Rupees six thousand and seven hundred only),
- b) pay the complainant a sum of Rs. 5,000/- (Rupees five thousand only)

towards compensation for the inconvenience, mental agony and hardship inflicted on him, and

- c) pay the complainant a sum of Rs. 5,000/- (Rupees five thousand only) towards cost of litigation,

all with 9% interest per annum from the date of filing of the complaint till the date of realisation. The opposite party shall comply with the above directions within 30 days of receipt of a copy of this order. Once all the above directions are duly complied, the opposite parties are at liberty to collect the mobile phone in question under proper acknowledgment.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 27th day of January 2025.

Sd/-
Sreeja S.
Member

Sd/-
Ram Mohan R
Member

Sd/-
C. T. Sabu
President

Appendix

Complainant's Exhibits :

Ext.A1 is the Invoice No. 0430 dated 29/06/2018 issued by the second opposite party to the complainant, in respect of the sale of a mobile phone "Nokia 2TA 1011 DS, 353405091909659", for a sum of Rs. 6,700/- (Rupees six thousand and seven hundred only).

Ext.A2 is Delivery note with job sheet No. 981465550/180730/009 dated 30/07/2018 issued by Thrissur Mobile Care, 1st Floor, Achus Centre, Poothole, Near Kerala Ice Factory, Thrissur, to the complainant in respect of repair of the MO1 Mobile Phone.

Ext.A3 is Delivery Note with Job sheet No. 981465550/180811/008 dated 11/08/2018 issued by Thrissur Mobile Care, 1st Floor, Achus Centre, Poothole, Near Kerala Ice Factory, Thrissur, to the complainant in respect of repair of the MO1 Mobile Phone.

Ext.A4 is Delivery note with Job sheet No. 981465550/180922/007 dated 22/09/2018 issued by Thrissur Mobile Care, 1st Floor, Achus Centre, Poothole, Near Kerala Ice Factory, Thrissur, to the complainant in respect of repair of the MO1 Mobile Phone.

MO1:- is mobile phone with declarations “Model TA-1011, made in India, IMEI 1:- 353405091909659”, amongst others.

Id/-
Ram Mohan R
Member

//True copy//

Assistant Registrar

Auk

//True copy//

Assistant Registrar

Auk

//True copy//

Assistant Registrar

//True copy//

Assistant Registrar

