2024 INSC 496

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 353 OF 2008

M/S DAIMLER CHRYSLER INDIA PVT. LTD. …APPELLANT(S)

VERSUS

M/S CONTROLS & SWITCHGEAR COMPANY LTD. & ANR. …RESPONDENT(S)

WITH

C.A. NO. 19536-19537 OF 2017

MERCEDES BENZ INDIA PVT. LTD. & ANR. …APPELLANT(S)

VERSUS

CG POWER AND INDUSTRIAL SOLUTIONS LTD. & ORS. …RESPONDENT(S)

WITH

C.A. NO. 2633 OF 2018

M/S. CG POWER AND INDUSTRIAL SOLUTIONS LTD. …APPELLANT(S)

VERSUS

MERCEDES BENZ INDIA PVT. LTD. & ORS. …RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. Though factually different, these appeals involve common question of law - whether the purchase of a vehicle/good by a Company for the use/personal use of its directors would amount to purchase for "commercial purpose" within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 (now re-enacted as Consumer Protection Act, 2019)?

2. The CA No. 353 of 2008 has been filed by the appellant - M/s Daimler Chrysler India Pvt. Ltd., now known as Mercedes Benz India Pvt. Ltd. (original opponent no. 1) arising out of the Original Petition No. 09 of 2006 filed by the respondent no. 1 - M/s Controls and Switchgear Company Ltd. (original complainant), challenging the impugned judgment and order dated 17.09.2007 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the National Commission), in the said O.P. No. 9/2006.

3. The CA Nos. 19536-19537 of 2017 have been preferred by the appellant - Mercedes Benz India Pvt. Ltd. and Anr. (original opponent nos. 1 and 2) arising out of the Consumer Case No. 51 of 2006 filed by the respondent no. 1 - CG Power and Industrial Solutions Ltd. and Mr. Sudhir M. Trehan, M.D. of respondent no. 1, (original

complainants), challenging the impugned orders dated 08.07.2016 and 11.09.2017 passed by the National Commission in the said C.C. No. 51/2006. The cross appeal being no. CA No. 2633 of 2018 has been preferred by the appellant – M/s CG Power and Industrial Solutions Ltd. (original complainant no. 1) against the respondents - Mercedes Benz India Pvt. Ltd. and Ors. (original opponents) challenging the judgment and order dated 11.09.2017 passed in the said Consumer No. 51 of 2006 by the National Commission, in so far as it is against M/s. C.G. Power.

4. At the outset, it may be noted that in Original Petition No. 09 of 2006 (from which CA No. 353 of 2008 arises), the National Commission vide the impugned order dated 17.09.2007 after holding that the Complainant-Company being a legal entity, was entitled to file a Complaint, and that the cars purchased for the use of the directors of the Company, not used for any activity directly connected with commercial purpose of earning profit, could not be said to have been purchased by the complainant-company for "commercial purpose", had directed the appellant (original opponent no. 1) to replace the Car no. DL-5CR-0333 with a new car of the same or similar model, or in the alternative refund its full purchase price, namely one half of the amount of Rs. 1,15,72,280/- which was paid by the complainant to the opposite parties for the purchase of the two vehicles in question,

and take back the vehicle. It may further be noted that vide the said impugned order dated 17.09.2007, the National Commission had also passed the order with regard to the second car being car no. DL-9CV-5555, purchased by the complainant. In respect of that part of the order pertaining to the second car, the appellant had preferred an appeal being CA No. 6042 of 2007 before this Court. The said Appeal came to be disposed of vide the order dated 11.01.2008 by this Court. Hence, now, we are concerned with the impugned order dated 17.09.2007 pertaining to the car no. DL-5CR-0333 only, so far as the CA No. 353 of 2008 is concerned.

5. It is further pertinent to note that the findings recorded in the said judgment and order dated 17.09.2007 in Original Petition No. 09 of 2006 with regard to the maintainability of the Complaint at the instance of the complainant-company in respect of the car purchased for the use/personal use of the director of the company, being in conflict with the findings recorded by an another two-member Bench of the National Commission in case of ***General Motors Pvt. Ltd. Vs. G.S. Fertilizers Pvt. Ltd.***[1] in which it was held *inter alia* that the vehicle purchased by a company for its Managing Director would amount to its purchase for a commercial purpose, the matter was

[1] **II (2013) CPJ 72 (NC)**

referred to the three-member Bench of the National Commission. The three-member Bench in the Consumer Complaint No. 51 of 2006 vide the impugned judgment and order dated 08.07.2016 held as under:

> "11(a) If a car or any other goods are obtained or any services are hired or availed by a company for the use/personal use of its directors or employees, such a transaction does not amount to purchase of goods or hiring or availing of services for a commercial purpose, irrespective of whether the goods or services are used solely for the personal purposes of the directors or employees of the company or they are used primarily for the use of the directors or employees of the company and incidentally for the purposes of the company.
>
> (b) The purchase of a car or any other goods or hiring or availing of services by a company for the purposes of the company amount to purchase for a commercial purpose, even if such a car or other goods or such services are incidentally used by the directors or employees of the company for their personal purposes."

6. The appellants - Mercedes Benz India Pvt. Ltd. (the original opponents in Consumer Complaint No. 51/2006) challenged the said Judgment and Order dated 08.07.2016 passed by the three-member Bench of the National Commission, before this Court by preferring an Appeal being C.A. No. 10410 of 2016. This Court disposed of the said Appeal by passing following order on 20.02.2017: -

> "Heard Mr. Shyam Divan, learned senior counsel along with Mr. Vineet Maheshwari, learned counsel appearing for the petitioner and Mr. Amir Singh Pasrich, learned counsel appearing for the 1st respondent.
>
> The present appeal calls in question the legal propriety of the order dated 8.7.2016 passed by the National Consumer Disputes Redressal Commission, Bench No. 1, New Delhi (for short, 'the National Commission') in Consumer Complaint No. 51 of 2006

repelling the submission of the appellant that the complaint before the said Commission is not maintainable.

Having heard learned counsel for the parties, we are of the considered opinion that the National Commission should adjudicate the dispute finally and thereafter it will be open to the appellant to challenge the order of maintainability, i.e., the present order as well as the final order. The National Commission is requested to dispose of the Consumer Complaint No. 51 of 2006 within three months hence.

With the aforesaid observation and liberty, the civil appeal stands disposed of. There shall be no order as to costs."

7. Thereafter, the National Commission adjudicated the disputes between the parties on merits vide the impugned judgment and order dated 11.09.2017 and disposed of the Consumer Case No. 51 of 2006 by giving following directions:

"(i) The opposite parties No.1 & 2 shall pay a sum of Rs.5.00 lacs to complainant No.1 for the deficiency in the services rendered to it on account of the airbags of the car having not deployed/triggered;

(ii) The opposite parties No.1 & 2 shall pay a sum of Rs.5.00 lacs as compensation to complainant No.1 for the unfair trade practice indulged into by them;

(iii) The Opposite Parties No.1 & 2 shall, in the Owner's Manual to be provided to the buyers of their E-class Cars, as well as on their website, provide adequate information with respect to the deployment triggering of the airbags of the vehicle, in consultation with AAUI.

(iv)The opposite parties No.1 & 2 shall pay a sum of Rs. 25,000/- as the cost of litigation to complainant No.1.

(v) The payment in terms of this order shall be made and the directions contained herein will be complied within three months from today."

8. As stated earlier, the said two orders 08.07.2016 and 11.09.2017 passed in Consumer case no. 51 of 2006 have been challenged by

the appellants-Mercedes Benz by way of C.A. No. 19536-19537 of 2017. The Cross Appeal being C.A. No. 2633 has been preferred by M/s CG Power and Industrial Solutions Ltd. (original complainant), being aggrieved by the judgment and order dated 11.09.2017 passed by the National Commission.

9. The common bone of contention raised by the learned counsels appearing for the appellants - M/s Daimler Chrysler India Pvt. Ltd., (now Mercedes Benz India Pvt. Ltd.) in their respective Appeals is that the purchase of car/vehicle by a company for the use/personal use of its directors could not be said to be the purchase of vehicle for self-employment to earn its livelihood, but it has to be construed as the purchase of vehicle for "commercial purposes", and therefore such company would fall outside the purview of the definition of "consumer" within the meaning of Section 2(1)(d) of the said Act. In this regard it would be apt to reproduce the relevant part of the definition of "Consumer" as contained in Section 2(1)(d) of the Act, which reads as under-

> "2(1)(d) "consumer" means any person who,—
>
> (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

> (ii)….
>
> *Explanation*.—For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;"

10. From the bare reading of the said definition, it is discernible that the definition of "consumer" does not include a person who obtains any goods for "resale" or for "any commercial purpose". Though what is "commercial purpose" has not been defined under the Act, it has been interpreted in catena of decisions by this Court.

11. In ***Laxmi Engineering Works vs. P.S.G Industrial Institute***[2] this Court after discussing the earlier decisions concluded *inter alia* that whether the purpose for which a person has bought goods is a "commercial purpose" within a meaning of definition of expression "consumer" in Section 2(1)(d) of the Act, is always a question of fact to be decided in the facts and circumstances of each case.

12. In ***Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and Others***[3]**,** this Court culled out broad principles for determining whether an activity or transaction is for a "commercial purpose" or not, while holding that though no strait jacket formula could be adopted in every case.

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[2] **(1995) 3 SCC 583**
[3] **(2020) 2 SCC 265**

> **"19.** To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is "for a commercial purpose":
> **19.1.** The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, *ordinarily*, "commercial purpose" is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.
> **19.2.** The purchase of the good or service should have a close and direct nexus with a profit-generating activity.
> **19.3.** The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.
> **19.4.** If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of "generating livelihood by means of self-employment" need not be looked into."

13. Further in the case of ***Shrikant G. Mantri vs. Punjab National Bank***[4], this Court observed thus-

> **"50.** It is thus clear, that this Court has held that the question, as to whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, **ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities; that the purchase of the good or service should have a close and direct nexus with a profit-generating activity; that the identity of the person making the purchase or the value of the transaction is not conclusive for determining the question as to whether it is for a commercial purpose or not. What is relevant is the dominant intention or dominant purpose for the transaction and as to whether the same was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.** It has further been held that if the dominant purpose behind purchasing the good or service was for the personal use and the consumption of the purchaser and/or

[4] **(2022) 5 SCC 42**

> their beneficiary, or is otherwise not linked to any commercial activity, then the question of whether such a purchase was for the purpose of "generating livelihood by means of self-employment" need not be looked into."

14. In the case of ***National Insurance Company Limited vs. Harsolia Motors and Others***[5]**,** this Court while relying and emphasizing on the principles laid down in ***Lilavati Kirtilal Mehta Medical Trust*** (supra) noted that what needs to be seen while determining whether the object purchased is being used for commercial purpose or not, is whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. What needs to be determined is whether the object had a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

15. Further in the case ***Rohit Chaudhary and Another vs. Vipul Limited***[6]**,** it was held as follows –

> **"15.** The expression "commercial purpose" has not been defined under the Act. In the absence thereof we have to go by its ordinary meaning. "Commercial" denotes **"pertaining to commerce"** (Chamber's Twentieth Century Dictionary); it means **"connected" with or engaged in commerce; mercantile**; **"having profit as the main aim"** (Collin's English Dictionary);

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[5] **(2023) 8 SCC 362**
[6] **(2024) 1 SCC 8**

relate to or is connected with trade and traffic or commerce in general, is occupied with business and commerce.

16. The Explanation [added by Consumer Protection (Amendment) Act 50 of 1993 replacing Ordinance 24 of 1993 w.e.f. 18-6-1993] excludes certain purposes from the purview of the expression "commercial purpose" — a case of explanation to an exception to amplify this definition by way of an illustration would certainly clear the clouds surrounding such interpretation. For instance, a person who buys a car for his personal use would certainly be a consumer, but if purchased for plying the car for commercial purposes, namely, as a taxi, it can be said that it is for a commercial purpose. However, the Explanation clarifies that even purchases in certain situations for "commercial purposes" would not take within its sweep the purchaser out of the definition of expression "consumer". In other words, if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods would continue to be a "consumer".

17. This Court in Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers [Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers, (2020) 2 SCC 265 : (2020) 1 SCC (Civ) 320] , has held that **a straitjacket formula cannot be adopted in every case and the broad principles which can be curled out for determining whether an activity or transaction is for a commercial purpose would depend on facts and circumstances of each case.**

18. Thus, if the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from the record, such purchaser would not fall within the four corners of the definition of "consumer". On the other hand, if the answer is in the negative, namely, if such person purchases the goods or services is not for any commercial purpose and for one's own use, it cannot be gainsaid even in such circumstances the transaction would be for a commercial purpose attributing profit motive and thereby excluding such person from the definition of "consumer"."

16. The sum and substance of the above decisions is that to determine whether the goods purchased by a person (which would include a legal entity like a company) were for a commercial purpose or not, within the definition of a "consumer" as contemplated in Section

2(1)(d) of the said Act, would depend upon facts and circumstances of each case. However ordinarily "commercial purpose" is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities. The purchase of the goods should have a close and direct nexus with a profit generating activity. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. If it is found that the dominant purpose behind purchasing the goods was for the personal use and consumption of the purchaser and/or their beneficiary, or was otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of "generating livelihood by means of self-employment" need not be looked into. Again, the said determination cannot be restricted in a straitjacket formula and it has to be decided on case-to-case basis.

I. CIVIL APPEAL NO. 353 OF 2008

17. So far as the CA No. 353/2008 is concerned, it appears that as per the case of the respondent no. 1 (original complainant), it had purchased two cars for the use by its Whole-time Executive Directors as part of their perquisites and the said high priced luxury cars were in fact being used by them for their personal use and for the use of their immediate family members. It was strenuously urged by the

learned senior counsel Ms. Arora for the appellant that if the car in question was purchased by the respondent no. 1 for the personal use of its Director, it must carry a requisite form attested by the Chartered Accountant along with the Income Tax returns of the concerned Director, and since such document or form having never been submitted and produced before the Commission, it was required to be presumed that the car was purchased by the respondent no. 1-company for its commercial purpose. Such a submission could not be accepted. It is trite to say that when a consumer files a complaint alleging defects in the goods purchased by him from the opponent seller, and if the opponent-seller raises an objection with regard to the maintainability of the consumer complaint on the ground that the goods in question were purchased by the complainant-buyer for its commercial purpose, the onus to prove that they were purchased for "commercial purpose" and therefore, such goods would fall outside the definition of "consumer" contained in Section 2(1)(d) of the Act, would be on the opponent-seller and not on the complainant-buyer. In the instant case, it has been specifically asserted by the respondent-complainant that the car in question was purchased by it for the personal use of its Whole-time Director and for his immediate family members, and the dominant purpose of purchasing the car was to treat it as a part of the perquisite to the Director. There is nothing

on record worth the name to show that the said car was used for any commercial purpose by the respondent-complainant. Even if it is presumed that the respondent-complainant company had taken benefit of deduction available to it under the Income Tax Act, nonetheless in absence of any material placed on record to suggest that such purchase of car had a nexus or was linked to any profit generating activity of the company, it could not be said that such a high-priced luxurious car was purchased by the respondent no. 1 for its “commercial purpose”.

18. As regards the defects in the car, both the sides have heavily placed reliance upon the correspondence which took place between them after the purchase of the car by the respondent no. 1 and after the defects were detected in the car. The said correspondence has also been tabulated by National Commission in the impugned order from which it appears that within a very short time after the purchase of the car in question on 31.03.2003, one of the directors of the respondent-company namely Mr. Ashok Khanna had taken the car out from Delhi for going to Chandigarh and Dehradun in April, 2003 and found that “sitting at the back seat, the center hump on the floor over the drive shaft of the vehicle was excessively heated and particularly so on the left side of the center hump". The said defect was immediately reported to the appellant and the respondent no. 2,

however after examining the vehicle they had reported that everything was fine and nothing unusual was observed. Since, the said complaint of heating persisted, the respondent-complainant again requested the appellant to rectify the defect. Thereafter, several correspondences ensued between the parties. It is pertinent to note that in the letter dated 21.08.2003, it was stated by the appellant that "although the area (center hump) was observed to be warm, it is not a defect". In its letter dated 02.07.2004, the respondent no. 2 who happened to be the dealer of the appellant required the complainant-company with regard to the center hump to keep it under observation over a longer distance and to report the matter in case of any abnormalities, had confirmed that the AC control unit was found to be defective. Thereafter, on the respondent-company having made the complaint of excessive heating on the center hump more prominently on long drives out of station, the car was once again inspected by the engineers of the appellant-company, who had informed the respondent-complainant vide letter dated 03.12.2004 that "on account of the catalytic converter fitted underneath the car, these cars do heat a lot", and advised that "the matter could be resolved by adjusting the rear air-conditioning vents suitably". It appears that thereafter repeated requests/complaints having been made by the respondent-complainant, the respondent no. 2 wrote vide the letter dated

22.12.2004 that the exhaust pipe of the car needed replacement. The respondent-complainant again wrote to the appellant vide the letter dated 23.12.2004 that though they were offering to replace the exhaust pipe, it was not only the center portion which was heating up but the entire floor was heating up with excessive heat and therefore, the vehicle needed to be replaced. The respondent-complainant ultimately wrote a letter dated 21.03.2005 to the appellant reiterating the persisting problem of hump heating despite a catena of experiments carried out towards rectification of the malfunctioning of the car and requested for the replacement of the vehicle. The said request having been rejected by the appellant on 30.03.2005, the complaint was filed by the respondent-complainant before the National Commission.

19. It appears that on the submission made on behalf of the appellant that it would call the concerned Engineer for examining the vehicle, the National Commission vide order dated 10.08.2006 directed that the vehicle would be examined by the Engineer of the appellant in presence of the respondent No.1 or its representative. Pursuant to the said order, Mr. Stephen Lobo, Manager Field Service working at Pune Office of the Appellant, conducted a test drive alongwith the representative of the respondent – complainant, and submitted his affidavit to the Commission. However, the temperature recorded by

the said Manager of the Appellant having been disputed by the respondent - complainant, the National Commission vide the order dated 25.09.2006 appointed one Joint Registrar and one Deputy Registrar of the Commission as Local Commissioners, further directing them to travel in the cars in question separately on 07.10.2006 for more than 300 kms towards Rishikesh side. Accordingly, the Local Commissioners travelled and submitted their respective reports before the Commissioner.

20. In view of the order dated 10.08.2006 passed by the National Commission the test drive was conducted by the engineers of the appellant in presence of the respondent-complainant on 21.08.2006 and the result of the test drive of the car DL-5CA-0333 was as under:

Chassis No.	Time	Kms	Temp Gauge I	Temp Gauge II	Remark	Ambient Temp
WDB 2201676A 326003			Provided by DCIPL	Provided by C&S		
1 start	11.45	41523	32.5	39		38
2	13.15	41577	19.7	44		36
3	14.35	41632	17.00	51		35.5
4	16.11	41673	19.1	50		34
5	17.22	41723	19.6	53		34.5
6	19.23	41769	19.4	49		36.5
7	20.18	41823	17.4	48		35

21. Again, the National Commission having passed the order on 25.09.2006, appointing the Local Commissioners for measuring the temperature of the hump of the car, in presence of representatives of both the parties, the Local Commissioners had travelled on

07.10.2006 in the car in question for more than 300 kms. towards Rishikesh side, and submitted the report regarding the temperature of the running car at a distance of every 50 kms. as under:

S. No.	Time	Km.	Temp. gauge 1 of DCIPL (Degree)	Temp. gauge 2 of C & S (Degree)	Ambient (Degree)
1.	8.30 AM	43649	33.2	39	25.5
2.	9.45 AM	43699	38.6	46	30.5
3.	10.45 AM	43749	38.6	47	32
4.	11.05 AM	43759	39.5	47	34
5.	12.40 PM	43799	38.6	46	32
6.	1.55 PM	43850	37.3	47	32
	Return Journey				
7.	4.00 PM	43866	35.7	39	35
8.	5.00 PM	43899	37.3	47	33
9.	6.00 PM	43950	38.1	46	29
10.	7.50 PM	44000	38.1	45	29.5
11.	9.00 PM	44050	37	44	30
12.	10.00 PM	44083	38.2	46	29.5

The Local Commissioner in his report dated 09.10.2006, had made following note with regard to the car in question: -

> "1. The sensor gauge fixed by the opposite party was 1 mm above while the sensor gauge provided by the complainant was fixed on the mat. The same can be seen with the help of photographs taken by the parties.
>
> 2. While traveling in the car the temperature recorded by the sensor gauges generally showing the increasing tendency.
>
> 3. There is a variation of 5 - 9 degree temperature between the temperatures noted down from the two sensor gauges provided by the parties.
>
> 4. On perusing the temperature chart, it is found that the temperature recorded by both the sensor gauges is higher than ambient temperature throughout the journey."

22. It is further pertinent to note that pending the said proceedings before the National Commission, the appellant had made two applications,

one on 12.10.2006 seeking permission to make one more effort by providing additional insulation to address the concerns of the complainant in regard to the high temperature at the left hand side of the hump felt by it, and the other application seeking prayer to permit to test the complainant's car by an appropriate laboratory, or in the alternative to dispose of the matter with direction to provide an additional insulation to the hump of the cars being used by the complainant or in the alternative to hold that the used car be resold by the complainant to the appellant (opponent no. 1) for present market value/book value. The respondent-complainant having not agreed to the said proposals made in the said applications, the National Commission vide the order dated 06.02.2007 had rejected the said applications.

23. From the afore-discussed documents/applications produced on record before the National Commission, it was clearly established by the respondent-complainant that an excessive heat was generated in the car, and particularly, the center hump on the floor over the drive shaft was felt excessively heated as also the left side of the center hump. As rightly submitted by the learned counsel for the respondent-complainant, after continuous trial and error method of rectification conducted to remove the defect of overheating, since the said complaint persisted, the appellant had moved the applications

seeking permission of the Commission to make one more effort by providing additional insulation, and also for permitting the appellant to repurchase the car in question for the market value/book value as it existed at the relevant time in 2007. The market value of the car in question as on 25.11.2006 was stated to be Rs. 34 lakhs, and the book value thereof as on 31.12.2006 was stated to be about Rs. 36 lakhs. The appellant though not admitted specifically about the said defects in the car, had indirectly stated in the said application seeking permission to provide additional insulation to the effect that the warm surface of hump/tunnel was a natural physical characteristic of the car and hence could not be altered to a large extent and that the additional insulation could be fitted by a minor modification. The said statements in the said applications read with the other materials/documents on record as also the reports of the Local Commissioner appointed by the National Commission, has led us to come to an irresistible conclusion that the inherent defect of overheating of the car in question had persisted despite the appellant having provided the rectification measures like providing additional insulation in the car, which had caused great inconvenience and discomfort to the passengers seated in the car in question. The advice given by the technical expert of the appellants that the overheated portions of the rear cabin of the car should be cooled by

directing the draft from the air-conditioning vents towards the said portion, was not only an illogical advice but was an absolute improper advice given to conceal the defect in the car.

24. Considering the affidavits, correspondences, reports and the other material on record, we have no hesitation in holding that such overheating of the surface of hump and the overall high temperature in the car was a fault, imperfection or shortcoming in the quality or standard which was expected to be maintained by the appellants under the contract with the respondent-complainant and therefore was a 'defect' within the meaning of Section 2(1)(f) of the said Act.

25. People do not purchase the high-end luxurious cars to suffer discomfort more particularly when they buy the vehicle keeping utmost faith in the supplier who would make the representations in the brochures or the advertisements projecting and promoting such cars as the finest and safest automobile in the world. The respondent-complainant having suffered great inconvenience, discomfort and also the waste of time and energy in pursuing the litigations, we are of the opinion that the impugned order passed by the National Commission of awarding the compensation by directing the appellants to refund the purchase price i.e., Rs. 58 lakhs approx. to the respondent-complainant, and take back the car (vehicle) as such does not warrant any interference. However, at this juncture, it may

be noted that the impugned order was passed on 17.09.2007 and before that pending the proceedings, the appellant had already made an offer in the year 2006 to repurchase the car in question as per the market value of the car as of November 2006 to be Rs. 34 lakhs or at the book value of the car as of December 2006 to be about Rs. 36 lakhs, however the respondent had not agreed to the said proposal, and continued to use the said car for about seventeen years till this date. Therefore, having regard to the said offer made by the appellants, and having regard to the subsequent event of the respondent-complainant having retained and used the car in question for about seventeen years, we are of the opinion that the interest of justice and balance of equity would be met if the respondent-complainant is permitted to retain the car in question and the appellant is directed to refund Rs. 36 lakhs instead of Rs. 58 lakhs as directed by the National Commission in the impugned order.

II. **CIVIL APPEAL NOS. 19536-19537/2017 AND 2633/2018**

26. So far as C.A. No. 19536-19537/2017 filed by the appellants - Mercedes Benz India Private Ltd. and another (Original Opponents) and the cross Appeal being C.A. No.2633 of 2018 filed by M/s C.G. Power and Industrial Solutions Ltd., (Original Complainant No.1) arising out of Consumer Complaint No. 51/2006 are concerned, as stated hereinabove, after the challenge of the order dated 08.07.2016

passed by the National Commission in the said case, before this Court by way of filing C.A. No.10410/2016, this Court had disposed of the said Appeal by directing the National Commission to adjudicate the dispute between the parties finally, leaving it open for the appellant Mercedes Benz to challenge the order on maintainability as well as the final order. Accordingly, the final order having been passed by the Commission, the appellant has challenged the order dated 08.07.2016 as well as the final order dated 11.09.2017 by way of instant appeals, and the cross appeal has been filed by the respondent-complainant against the order dated 11.09.2017.

27. In the instant case, the respondent nos. 1 and 2 (Original Complainants) had filed the complaint being Consumer Complaint No. 51/2006 before the National Commission, alleging *inter alia* that in October 2002, the appellants (original opponents) had launched a new Mercedes Benz, E-Class - E 240 petrol version (hereinafter referred to as the car in question). At the time of launch of e-class model, the appellants had proclaimed and elaborated safety system of e-class *inter alia* that it included front airbags, side airbags, and window airbags, automatic child seat recognition and central locking with crash sensors, and that it was the safest place on the road etc. The correct operation of the airbags was also guaranteed by the appellants. Based on such representations and especially of the

safety features, the respondent no. 1 on 27.11.2002 had purchased the car in question bearing registration No. MH-01-GA-6245 from the appellants for its Managing Director-respondent No. 2 for a total consideration of Rs.45,38,123/-.

28. It was further alleged in the complaint by the respondents that on an official trip on 17.01.2006 at 06:20 A.M, the respondent No.2 was returning from Nasik to Mumbai. At that time, the car in question was being driven by the company driver Mr. Madhukar Ganpat Shinde, while the respondent no. 2 was seated in the back seat of the car. On Nasik express, NH-3, a goods carrier coming from the opposite side, collided head-on with the car, and the impact of the collision was so high that the entire front portion of the car was smashed, however none of the airbags opened. As a result, thereof, the driver suffered the injuries on his neck, arms and forehead, whereas the respondent no. 2 suffered grievous injuries on his face, a deep gash on the forehead fracture at the nasal bone and nasal septum, fracture of the C1 vertebra at the anterior and posterior arches and fracture of C2 vertebra. The respondent no. 2 had to be hospitalized for more than six weeks and even after the discharge he was advised strict bedrest at home. It took very long time for him to recover and resume the work. According to the respondents-complainants, if the airbags had opened at the right time, as represented by the appellants-

opponents, the respondent no. 2 might have suffered less or no injuries. The complainants had also filed an FIR with the police station at Nasik on 17.01.2006. On 20.01.2006, the car was taken by the respondent No. 3 being authorized service centre and a detailed inspection and assessment of cost for the repairs was made. It was also alleged that in number of cases the airbags had failed to deploy at the time of accidents and people had suffered grievous injuries or had died also. Due to the said accident, not only that respondent no.2 had suffered grave injuries, agony and mental trauma, his family members and the respondent-company itself, had suffered lot of inconvenience and financial loss. It appears that lot of correspondence had ensued between the parties, and ultimately the respondents-complainants had filed the complaint seeking compensation under the various heads.

29. On the maintainability of the complaint, though the learned Senior Advocate Mr. Dhruv Mehta had strenuously urged that the purchase of the car by the respondent no. 1 company for the use of the respondent no.2 i.e., its director would tantamount to purchase for commercial purpose, the said submission cannot be accepted in view of the elaborate discussion and reasonings recorded by us hereinbefore while dealing with the issue in C.A. No. 353/2008. In this case also the appellants had failed to bring on record any material to

show that the dominant purpose or dominant use of the car in question was for commercial purpose or that the purchase of the car had any nexus or was linked with any profit generating activity of the respondent no. 1 company. We therefore confirm the finding recorded by the three-member Bench of the National Commission in the order dated 08.07.2016 on the maintainability of the complaint filed by the respondent-complainant company.

30. On the merits of the claim made by the respondents – complainants, it was sought to be submitted by Learned Senior Advocate Mr. Dhruv Mehta for the appellants-original opponents that the complainants did not lead any expert evidence or any other evidence to establish that there was any defect in the front airbags of the car in question and in absence of any such evidence, the National Commission could not have concluded that the front airbags of the car were defective. According to him, the Commission had committed gross error in discarding the report of the expert produced by the appellants, who had stated as to why deployment of the driver's airbag was not required in this case. According to him, since, the driver was sufficiently restrained by the seat belt, there was no need for the front airbag to deploy at the time of accident and the front passenger airbag would be triggered only if the front passenger seat was occupied, whereas in the instant case, the complainant no. 2 was

sitting at the rear left seat and therefore the front passenger's airbag could not have deployed. In any case, runs the submission of Mr. Mehta, the complainants had already sold out the car during the pendency of the proceedings before the National Commission and thereby had created a situation where the Commission could not have inspected the car in question. He further submitted that there was no "unfair trade practice" practiced by the appellants and the damages/compensation awarded by the Commission was without any legal basis.

31. The Senior Learned Advocate Mr. Prashanto Chandra Sen appearing on behalf of the respondents-complainants however vehemently submitted that admittedly neither the front airbags nor the side airbags of the car deployed as a result of the accident. The appellants had not produced on record the owner's manual and the features of the airbags given in the owner's manual on record produced by the complainants did not disclose as to what was the pre-determined level at which the airbags would deploy. According to him, the appellants had misrepresented that their car was the safest place on the road and that the provision of airbags was an additional safety measure not only for the front passengers but also for the rear passengers. According to him, since the owner's manual did not contain accurate and complete information as regards the safety

measure of airbags, and the appellants having misrepresented about the safety measures at the time of the promotion of the car, it was rightly construed as an “unfair trade practice” on the part of the appellants by the Commission, however, the Commission had committed an error in not awarding exemplary damages to the respondents-complainants.

32. In the instant case, there are certain undisputed facts as transpiring from the record, like that the purchase of the car was by the respondent no.1 for the respondent no. 2 its Managing Director. The occurrence of the accident on 17.01.2006 is not disputed. It is also not disputed that at the time of accident, the driver of the car was wearing the seat belt, whereas the respondent No. 2 who was sitting on the rear left side seat did not wear the seat belt. It is also not disputed that neither the airbags on the front side nor the airbags on the side of the respondent no. 2 had opened at the time of accident, as a result thereof, the respondent no. 2 sustained grievous injuries, and the driver sustained some minor injuries. It is also not disputed that neither the respondents nor the appellants had produced on record the owner’s manual of 2002 i.e. the year when the car in question was purchased by the respondents, though it was specifically directed by the Commission to produce the same by passing the order on 24.08.2017. Though subsequently, the

complainant had produced on record one owner's manual, the same did not appear to be of the relevant year by the Commission. The appellants-opponents had produced on record certain photographs as also the reports of technical experts of the appellants.

33. The National Commission after considering the material on record disposed of the complaint of the respondents - complainants directing the appellants to pay a sum of Rs. 5 lakhs to the complainant no. 1 for the deficiency in the services rendered to it on account of the airbags of the car having not deployed/ triggered and further directed the appellants to pay a sum of Rs. 5 lakhs as compensation to the complainant no. 1 for the unfair trade practice indulged into by them, and a sum of Rs.25,000/- as cost of litigation.

34. The National Commission after elaborately considering the Owner's Manual produced by the complainants, as the appellants - opponents had failed to produce the owner's manual of the relevant year 2002 when the car was purchased by the complainants and the other material on record, observed in Para no. 9 and 10 of the impugned judgment dated 11th September, 2017 as under: -

> **"9.** It is evident from a perusal of the above referred extract from the Manual that the side airbags are triggered only on the side on which an impact occurs in an accident and that the said airbags are independent of the front airbags. Since, admittedly, there was no impact on the side of the car in which complainant no.2 was sitting at the time of the accident, the side airbag would obviously not have triggered. Even otherwise the airbags on the

side will not trigger in the event of frontal accident unless the airbags system is such as to trigger every airbag irrespective of the side on which the impact occurs in an accident. Similarly, window bags which are independent of the front airbags also trigger on the side on which the impact occurs. Therefore, the window airbags would not have triggered in this case since there was no impact on the sides on which the window bags were provided in the vehicle.

10. As far as the front airbags are concerned, it is stated in the Manual that they are triggered if (i) a front-end impact occurs (ii) if collision happens at a force exceeding a 'predetermined level.' The Manual however, does not disclose as to what the said predetermined level was. If the front airbags were not to deploy in every accident resulting in front end impact, the opposite parties, in my view, ought to have disclosed to the buyers as to what the predetermined level necessary to trigger the front passenger airbag were. In the absence of such a disclosure in the Owner's Manual, as far as the functioning of the front passenger airbags are concerned would be deficient, on account of its not providing the requisite information to the buyer.

Section 2(1)(r) of the Consumer Protection Act, 1986 to the extent it is relevant provides that unfair trade practice means a trade practice which for the purpose of promoting the sale, use or supply of any goods adopts any unfair method or unfair or deceptive practice including that the goods are of a particular standard and quality. It is alleged in the complaint that the opposite parties at the time of launching E-Class Model highlighted its safety system, including airbags while proclaiming the vehicle to be the safest place on the road. Obviously, the opposite parties were seeking to encash upon the safety features of the vehicle, including the airbags provided therein, for the purpose of selling the vehicle. Therefore, it would be necessary for them to disclose to the buyers as to what the predetermined levels, necessary for triggering the front airbags of the vehicle were. Highlighting the safety features including the airbags for selling the vehicle, without such a disclosure, in my opinion, constituted an unfair and deceptive trade practice. It is only the opposite parties which knew what would be the level which would trigger the frontal airbags in the event of an accident. Therefore, the aforesaid material information ought not to have been withheld while selling the vehicle. The opposite parties therefore, indulged in unfair trade practice or the purpose or promoting the sale of their vehicle."

35. The National Commission also considered the report of Mr. Lothar Ralf Schusdzarra, the Technical Expert and Senior Engineer working with the Appellant Company who had inspected the car after the accident, and the photographs forming part of the report of the technical expert, and observed that the vehicle that is the car in question, had frontal accidental with another vehicle stated to be a container truck which had a higher chassis, and that the front portion of the car was badly damaged as a result of the said accident. The said photographs also corroborated with the depositions of the driver Mr. Madhukar Shinde and the respondent-complainant no. 2 Mr. Mohan Trehan which established that the front portion of the vehicle was smashed when it was hit by the truck and the collision of car with the truck was quite impactful.

36. There was nothing on record produced by the appellants to show that they had disclosed either in the Owner's Manual or in the Brochure about the limited functioning of the airbags, which according to them was an additional safety measure in the car. On the contrary, as per the case of the respondents-complainants a misrepresentation was made by the appellants at the time of promotion of the car in question that e-class car had a safety system which included front airbags, side-airbags and window airbags. Even if it is accepted that the airbags would deploy only when the seat belt

was fastened by the passenger, in the instant case admittedly, the frontal airbags of the car were not deployed though the driver had already fastened the seat belt. Thus, the defect in the car was clearly established so far as non-deployment of frontal airbags was concerned.

37. Incomplete disclosure or non-disclosure of the complete details with regard to the functioning of the airbags at the time of promotion of the car, has rightly been considered by the National Commission as the "unfair trade practice" on the part of the appellants, and awarded a sum of Rs. 5 lakhs towards it. The National Commission has also rightly balanced the equity by awarding Rs. 5 lakhs only towards the deficiency in service on account of the frontal airbags of the car having not deployed at the time of accident.

38. Since the National Commission has considered in detail the evidence and the material on record adduced by the both the parties, in our opinion the well-considered judgment dated 11th September 2017 passed by the National Commission does not warrant any interference.

39. It is needless to say that a trade practice which for the purpose of promoting the sale of any goods by adopting deceptive practice like falsely representing that the goods are of a particular standard,

quality, style or model, would amount to “unfair trade practice” within the meaning of Section 2(1)(r) of the said Act.

40. In that view of the matter, following order is passed: -

I. **C.A. No. 353/2008**

The respondent-complainant is permitted to retain the car bearing registration no. DL-9CV-5555. The appellant is directed to refund Rs. 36,00,000/- (Rupees thirty-six lakhs) to the respondent by way of compensation within three months from the date of this order, failing which the appellant shall pay interest at the rate of 9% per annum thereon from the date of this order till payment. The Appeal stands partly allowed.

II. **C.A. No. 19536 & 19537/2017 and C.A. No. 2633/2018**

All the three Appeals are dismissed.

……J.
(BELA M. TRIVEDI)

…….. J.
(PANKAJ MITHAL)

NEW DELHI;
JULY 09, 2024.