

SOUTH AFRICA / JUDGMENT

Perumal v South African Motorcycles (Pty) Ltd t/a Big Boy Scooters (NCT/86201/2017/75(1)(b)) [2018] ZANCT 4 (21 March 2018)

[2018] ZANCT 4

COURT

National Consumer Tribunal

BEFORE

T Bailey, X May, K Moodaliyar

CASE / FILE NUMBER

NCT/86201/2017/75(1)(b)

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IN THE NATIONAL CONSUMER

TRIBUNAL

HELD

IN CENTURION

Case

Number: NCT/86201/2017/75(1)

(b)

In

the matter between:

THAMENDEREN
PERUMAL
APPLICANT
and
SOUTH
AFRICAN MOTORCYCLES (PTY) LTD
trading
as
BIG
BOY
SCOOTERS
RESPONDENT

Coram: Mr.
T Bailey
–
Presiding
member
Mr.
X May
– Member
Prof.
K Moodaliyar –
Member
Date
of hearing
–
1
February 2018

JUDGEMENT

PARTIES

1. The Applicant is Thamenderen Perumal (the Applicant), a consumer, who resides in the Western Cape. The Applicant appeared in person at the hearing of this application in Cape Town.
2. The Respondent is Southern African Motorcycles (Pty) Ltd trading as Big Boy Scooters, whose physical address is 36 Steyn Road Farm, Rietvallei, 1801Q, Krugersdorp, 1739 (the Respondent).
3. The Respondent was represented by its Operations Manager, Leon Trotskie, who attended the hearing via Skype at the Tribunal's offices in Centurion.

APPLICATION

4. The Applicant has approached the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b) of the Consumer Protection

Act, 2008 (the CPA). The Applicant lodged a complaint with the Motor Industry Ombudsman of South Africa (the motor ombud) and the National Consumer Commission (the NCC). The NCC issued a notice of non-referral and the Applicant has obtained the leave of the Tribunal to refer this application to the Tribunal.

5. This application now comes before the Tribunal in terms of section 75 (4) of the CPA to determine whether or not the Respondent is bound to refund the Applicant the full purchase price of R22 798.00 that the Applicant paid the Respondent for two new Big Boy Pit Bikes, Model TTR 125S (the bikes).

BACKGROUND

6. On 19 March 2016, the Applicant purchased the bikes from the No Limited Quads dealership (the dealership) in the Western Cape. The bikes were not available at the dealership and the dealership undertook to source the bikes from the Respondent.
7. The Applicant wanted off road bikes and regarded the particular model of the bikes as being suitable for his purposes because the website clearly indicated that the TTR12S5 model comes with oversized 16 inch rear and 19 inch front wheels. Those wheels meant that the bikes would be much more stable when riding on sand and would therefore be much safer.
8. The bikes were delivered to the Applicant on 20 March 2016. The Applicant was told to inspect the bikes to ensure that he was happy with them. He immediately noticed that the wheels on the bikes did not match the size indicated on the website and drew this to the attention of the person delivering the bikes, whom he assumed was the owner of the dealership. That person advised the Applicant to refer any complaints directly to the Respondent.
9. The Applicant contacted the Respondent on or about 21 March 2016 and spoke to Sarah Mcbeth, who deals with customer relations on behalf of the Respondent. She confirmed that the website contained a mistake and undertook to ensure that the correct wheels and rims were delivered to the Applicant.
10. The Applicant was initially happy for the Respondent to replace the wheels without adversely affecting the bikes. However, it subsequently transpired that only one set of wheels was immediately available and the other set would have to be manufactured in China, which would take up to six weeks to complete. The Respondent also required the Applicant to pay the costs of replacing the wheels. These developments were not acceptable to the Applicant and he informed the Respondent that he wished to cancel the contract and be refunded the full purchase price. The Respondent informed the Applicant that it does not provide refunds.
11. On 10 June 2016 the Applicant referred a complaint to the NCC and the Consumer Goods and Services Ombud (the consumer goods ombud), who in turn referred him to the motor ombud. The Applicant referred the complaint to the motor ombud on 22 June 2016. On 27 March 2017 the motor ombud concluded that the Respondent must replace the rims and tyres of the bikes at no cost to the Applicant within 14 days of its finding.
12. The Respondent did not respond to the motor ombud's finding. On 21 April 2017 the Applicant referred the matter back to the motor ombud, who referred him to the NCC. The applicant was sent from pillar to post between the motor ombud and the NCC. On 21 June 2017 the NCC issued a notice of non-referral and on 4 July 2017 the Applicant referred this application to the Tribunal.

SUMMARY OF SUBMISSIONS

Applicant

13. The Applicant stated that the trust relationship between himself and the Respondent had broken down. He believed that the Respondent made false promises to him. He engaged in numerous emails and phone calls with the Respondent without success and had lost his interest in dirt biking.
14. Moreover, the Applicant had only used the bikes on about three occasions and the warranty on the bikes had expired. The Applicant was concerned that if the Respondent gave him the wheels at this stage he would not be placed in the position that he should have been when the bikes were first delivered to him. Nor was the Applicant certain that the Respondent would be willing to assist him if he experienced new problems with the bikes.

Respondent

15. Mr Troskie stated that the Respondent did not receive the motor ombud's findings because it was sent to an incorrect email address. The Respondent would have acted accordingly had it received the motor ombud's findings.
16. The warranty on the bikes, being dirt bikes, was valid for one year whereas the standard bikes usually have a three year warranty. The bikes were purchased in 2016 and would also have depreciated in value.
17. The Respondent was nevertheless willing to replace the wheels at no cost to the applicant and would extend the warranty by a further 12 months subject to an appointed dealer inspecting the bikes to confirm that the bikes are in good working order.

ANALYSIS

AND RELEVANT STATUTORY PROVISIONS

18. The Tribunal is required to determine whether or not the Respondent should refund the Applicant the full purchase price of the bikes.
19. Section 55 of the CPA deals with a consumer's right to safe, good quality goods. More specifically, subsections 55 (2) (a) and (b) respectively give to a consumer the "right to receive goods that are reasonably suitable for the purposes for which they are intended" and "are of good quality, in good working order and free of any defects".
20. Section 56 of the CPA deals with implied warranty of quality. Subsection 56 (1) provides that where there is an agreement pertaining to the supply of goods there is an implied provision that the retailer, amongst others, warrants that the goods comply with the requirements and standards contemplated in section 55. Subsection 56 (2) gives the consumer the right to within six months after taking delivery of the goods to return the goods to the supplier, and if the requirements and standards contemplated in section 55 are not met then the supplier must without imposing a penalty and at the supplier's risk either

under subsections 56 (2) (a) or (b) respectively "repair or replace the defective goods" or "refund the consumer the price the consumer paid for the goods".

21. The Respondent conceded that it had delivered the bikes with the incorrect size wheels to the Applicant. The Tribunal is satisfied

that the bikes were therefore rendered unsuitable for the purpose for which they were intended in terms of section 55 (2) (a) of the CPA.

22. The sequence of events reveals that the Applicant initially elected to have the wheels replaced but changed his mind and sought a full refund upon being told that he would have to pay to have the wheels replaced and it would take up to six weeks to source a second set of wheels from China. The Respondent refused to provide a full refund and the Applicant commenced what became an arduous route of complaint to the NCC, the consumer goods ombud, the motor ombud and ultimately the Tribunal.
23. The Tribunal is alive to the fact that the Applicant is a layperson and did not sit on his hands and do nothing when he discovered that the Respondent had delivered the bikes with the incorrect wheels. However, despite the Respondent having informed the Applicant that the Respondent did not provide full refunds the Applicant was nevertheless entitled to exercise his right in terms of section 56
- (2) (b) of the CPA: to return the goods to the Respondent without penalty and demand that the Respondent refund the full purchase price of the bikes to him. He did not do so. Instead, he elected to keep the bikes and proceeded to use them on about three occasions.
24. The motor ombud has previously concluded that the Respondent must replace the wheels at no cost to the Applicant. The Respondent informed the Tribunal that it would have complied with the motor ombud's conclusion if it had received it. It is still prepared to do so and is in addition prepared to provide an extended warranty of one year subject to an appointed dealer inspecting the bikes to ensure that the bikes are in good working order.
25. Moreover, a period of almost two years has elapsed since the Respondent delivered the bikes to the Applicant and the value of the bikes has inevitably depreciated despite the Applicant having hardly used them. The Tribunal is therefore satisfied that the Respondent must replace and fit the wheels, which is to include any related transport costs, at no cost to the Applicant.

ORDER

26. Accordingly, the Tribunal orders that:

26.1. The Applicant's request to be refunded the full purchase price of the bikes is dismissed;

26.2. The Respondent is to replace and fit the wheels, which is to include any related transport costs, as advertised on the Respondent's website at no cost to the Applicant within 21 days of the date of this judgment;

26.3. The Respondent is to provide the Applicant with a one year warranty on its usual terms and conditions calculated from the date of the bikes having been inspected and found to be in good working order by a dealer appointed by the Respondent; and

26.4. There is no order as to costs.

Thus done and handed down on this 21th day of March 2018.

[signed]

Prof. K. Moodaliyar

Member

With members T Bailey and X May concurring.

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Prepared on 13 October 2026 · Esheria