

## Other Hotline

December 18, 2014

### AUTO RECALLS & PRODUCT LIABILITY IN INDIA

The global automobile market is bullish like never before. With annual global auto sales hitting more than 80 million vehicles for the first time ever<sup>1</sup>, the stage seems to be set for a bull run in the auto market over the coming years. . With recent positive trends in the economy, a burgeoning middle class with spending power & upward mobility, India and her consumers seem all set to join the party.

The Indian automobile sector has experienced sustained growth since delicensing and economic reforms. 100% foreign direct investment (FDI) under the automatic route in this sector has opened up avenues and attracted international market players<sup>2</sup>, to the extent that the cumulative FDI in the Indian auto sector during April 2000 – August 2014 stands at US\$ 10,119.68 million. The impressive growth of the Indian automobile industry accounts for 22 per cent of the nation's manufacturing gross domestic product (GDP) and is also one of the largest job creators, both directly and indirectly.<sup>3</sup>

This positive trend aside, an important issue which worries the international auto manufacturers is that of auto recalls due to safety and manufacturing concerns. This now seems to have become quite commonplace in the international automobile market. Recently, there were news reports of defective airbags which resulted in a recall of around 16 million cars globally.

Auto manufacturers have not been historically subjected to as many recalls in the Indian market. However, leading car manufacturers have “**voluntarily**” recalled cars in India, on account of defective airbags or on failure of NCAP crash tests.

In addition, the year 2014 has witnessed a rise in recalls for automobile manufacturers in India, be it homegrown or international market players. Picture this – Audi,<sup>4</sup> Honda,<sup>5</sup> Nissan,<sup>6</sup> Maruti Suzuki<sup>7</sup> – some of the most enviable and trusted automobile brands, many of them worthy of a spot in an individual's list of dream machines, have all been victims of recalls in India for faulty manufacturing, within the span of last few months. This sudden rise in product recalls in India – a country which may not have seen half the number of recalls in the last decade, compared to the number of recalls that have been hitting the headlines of late – should probably be assessed on the basis of the regulatory scenario and the product liability regime.

An understanding of the laws on automobile safety and automotive regulations is pertinent, as they lay down guidelines and industry standards to be adhered to. The principal legislation governing the automobile sector in India is the Motor Vehicles Act, 1988 (MVA), accompanied by the Central Motor Vehicles Rules 1989 (CMVR). The MVA governs emission norms, automotive safety standards and consolidates the law on motor vehicles. In addition to rules prescribing emission limits, the CMVR also provides rules requiring vehicles to comply with safety regulations. Chapter V of the CMVR specifically deals with construction, equipment and maintenance of vehicles.

Similarly, Rule 126 of the CMVR<sup>8</sup> requires every vehicle manufacturer to submit a prototype of its vehicle to be subjected to tests by the testing agencies, which are mentioned under the Rule. The agency, upon satisfactory testing, grants a compliance certificate to the manufacturer.

The Ministry of Road Transport & Highways (MORTH) is the primary agency for regulation of the automotive industry in India and implementation of the MVA & the CMVR. To ensure participation of industry stakeholders in formulation of regulations, the Ministry consists of two committees i.e. Central Motor Vehicles Rules-Technical Standing Committee (CMVR-TSC) and Standing Committee on Implementation of Emission Legislation (SCOE), which advise the Ministry on automotive safety and emission regulations respectively. The Automotive Industry Standards Committee (AISC) and the Bureau of Indian Standards (BIS) assist the CMVR-TSC in drafting and implementation of standards on automotive safety, which have to be complied with by the automobile manufacturers.

Although a comprehensive process exists for formulation of safety and emission regulations for the auto industry, the liability and enforcement regime seem to be lacking, as there is no specific statute catering to product liability and recalls in India.

Generally, claims relating to product liability can be made under the following legislations:

- **The Consumer Protection Act, 1986 (CPA):** The CPA provides protection only to a ‘consumer’ as defined under section 2(d) of the Act. Individuals who purchase goods for ‘commercial purposes’ cannot initiate proceedings under the Act. A complaint may be made under the Act in case of defect in goods, deficiency in service, use or sale of hazardous goods in violation of law, excessive pricing, unfair trade practice or restrictive trade practices. It was observed in *Abahaya Kumar Panda v Bajaj Auto Ltd.*<sup>9</sup> that the manufacturers should not sell a product, in this case a vehicle, that suffers from any major defect, and if it escapes detection at quality check, the product should be promptly withdrawn from the market or from the consumer, voluntarily, once the manufacturers comes to know of

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the defect.

Thus, automobile manufacturers are also expected to recall defective goods or vehicles (voluntarily) on their knowledge.

- **The Indian Contract Act 1872 and the Sale of Goods Act 1930 (ICA & SGA):** The ICA deals with the general law pertaining to contracts for a particular purpose, while the SGA deals with contracts pertaining to sale of goods. Under the ICA, the standards of defect depend upon the contractual terms and conditions, along with any warranties or guarantees. The SGA provides for an implied warranty or condition as to the quality or fitness for any particular purpose for the goods sold, in situations where the buyer relies on the seller's judgment; where goods are bought by description from a seller who deals in goods of that description; or where a specific purpose may be annexed to the goods by trade usages. Thus, if a car purchased is not motorable (*which is the essential condition of purchase*) the buyer has the right to rescind the contract along with the right to claim damages from the seller.
- **Statutes Specific to the Auto Industry:** As discussed above, the MVA and the CMVR are the primary legislations that regulate standards in the Indian auto industry. Apart from general rules on driving license, use of safety headgear etc., the MVA also specifies provisions on maintenance and construction of vehicles and fines sale of vehicles in contravention to the Act. For safety standards, the CMVR relies on BIS standards, such as use commercial fuel as per BIS specification (IS 1460-2000), mentions general specifications on overall dimensions of the vehicle, and requires compliance with the Automotive Industry Standards (AIS), i.e. standards prescribed by the Automotive Research Association of India. BIS also formulates mandatory standards for the auto industry, for example specifications for tubes for pneumatic tyres (IS 13098:2012). Although the Act allows complaints only by the Central Government or by the BIS itself or a consumer recognized by these entities for such purpose, non-compliance with such mandatory standards still attracts serious penalties including fine or imprisonment, or both.
- **Tort Law & Common Law Principles:** In India, courts are also heavily guided by the principles of justice, equity and good conscience, and the common law principles. For example, negligence can be claimed if it can be shown that there was a breach of a duty to take care, which resulted in an injury. The duty of care owed by an auto manufacturer to its customers can be easily assessed from the fact that any defect or oversight in manufacturing a vehicle can cost the passengers dearly. Thus, a consumer can claim under the tort of negligence against an auto manufacturer, if the auto manufacturer is found to be negligent and the injury or damage suffered by the aggrieved consumer is attributable to the negligent act of the auto manufacturer.

#### AUTO RECALLS

Currently, recalls by auto manufacturers in India are "**voluntary**", based on Society of Indian Automobile Manufacturers' (SIAM) Voluntary Code on Vehicle Recall, 2012 (Code). The Code provides for vehicle manufacturers to voluntarily rectify, without cost to consumer, any technical problem affecting safety.<sup>10</sup> As the Code is voluntary in nature, it does not entail any provisions for penalizing non-adherence and hence lacks enforcement.

Therefore, the absence of a regulatory mechanism to elicit effective compliance, questions the effectiveness of the Code.<sup>11</sup> One attempt to regulate and improve road safety and vehicle standards was the proposed National Road Safety Policy, 2010. This policy sought to establish a board for regulation of road safety under the National Road Safety and Traffic Management Board Bill 2010, which provided for a fine up to INR 1 million for non-compliance with government safety standards. However, the Bill did not see the light of the day and has lapsed.

The unprecedented rise in the number of voluntary auto recalls in India has also prompted the introduction of the Road Transport and Safety Bill, 2014, (Bill). If this Bill is passed in its current form, it will be a radical change in the regulatory regime as it seeks to empower the National Authority, to be established under the Bill, to mandate auto manufacturers to recall a vehicle on receipt of 100 or more complaints of defect, which is capable of harming the driver or passengers.

*This is a major shift from the current position of voluntary recalls. In addition, this Bill also proposes a mechanism for compensating aggrieved consumers.*

However, the Indian market has not seen as many recalls, until recently. There also continues to exist an element of doubt in the minds of the Indian consumers who may perceive an auto recall in negative light, thus at times damaging the brand image of the auto manufacturer.

*In order to remedy this situation, it is essential that India adopts best practices and strives to attain global standards, which would go a long way in protecting consumer rights along with the interest of auto manufacturers.*

– Huzefa Tavawalla & Vivek Kathpalia

You can direct your queries or comments to the authors

<sup>1</sup> Phil LeBeau, 'Global auto sales hit record high of 82.8 million', available at <http://www.cnn.com/id/101321938#>.

<sup>2</sup> 'Automobile Industry', available at [http://business.gov.in/Industry\\_services/automobile\\_industry.php](http://business.gov.in/Industry_services/automobile_industry.php)

<sup>3</sup> Available at <http://www.ibef.org/industry/india-automobiles.aspx>

<sup>4</sup> [http://www.business-standard.com/article/pti-stories/audi-recalls-6-758-units-of-a4-sedan-in-india-114110100546\\_1.html](http://www.business-standard.com/article/pti-stories/audi-recalls-6-758-units-of-a4-sedan-in-india-114110100546_1.html)

<sup>5</sup> <http://www.livemint.com/Industry/JRbWpreH2MUFdM7K2i17aK/Honda-recalls-2338-Brio-Amaze-and-CRV-vehicles-in-India.html>

<sup>6</sup> <http://www.thehindu.com/business/Industry/nissan-to-recall-9000-units-of-micra-sunny/article6533006.ece>

<sup>7</sup> <http://www.livemint.com/Industry/FPBPikXF87ad9deOQBMQ4H/Maruti-recalls-69555-units-of-Dzire-Swift-and-Ritz.html>

<sup>8</sup> Rule 126, Central Motor Vehicle Rules, 1989 (as amended by Central Motor Vehicles (Amendment) Rules, 1993, G.S.R. 338(E), dated 26-3-1993).

<sup>9</sup> (1992) 1 CPJ 88 NC

<sup>10</sup> [http://articles.economictimes.indiatimes.com/2012-07-03/news/32523689\\_1\\_manufacturers-for-such-violation-vehicles-nhtsa](http://articles.economictimes.indiatimes.com/2012-07-03/news/32523689_1_manufacturers-for-such-violation-vehicles-nhtsa)

<sup>11</sup> [http://www.business-standard.com/article/companies/experts-slam-voluntary-auto-recall-policy-112070300008\\_1.html](http://www.business-standard.com/article/companies/experts-slam-voluntary-auto-recall-policy-112070300008_1.html)

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