

Present: Claimant in person.
Mr. Khalid Mahmood, defendant No.1 in person.

1. Defendant No.1 has submitted written statement which is hand written by him. He states that he does not want to engage an advocate and his hand written reply is his written statement.

2. As in written statement there is an admission by defendant No. 1 about sale of products to Claimant, hence this claim now can be decided without recording evidence in terms of Rule 14 (2) of the Punjab Consumer Protection Rules, 2009, which says as under:

“If the defendant admits the allegation made by the claimant, the Court shall decide the claim on the basis of the merit of the case and documents available on the record”

3. Raja Muhammad Afzal/Claimant by filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called Act) had asserted that he had purchased two batteries of Exide Pakistan Limited from defendant No.1 for a consideration of Rs. 9500/- (nine thousand & five hundred) on 03.06.2012; warranty of products was six months as evident from warranty cards; after three months of purchase, products became defective; Claimant repeatedly approached defendant No.1 but he prolonged the matter on one pretext or the other; Claimant served a legal notice to defendant No. 1 which was not replied. Prayer was made for replacement of products and for payment of Rs. 100,000/- (one lac) as damages which Claimant suffered due to conduct of defendant No. 1.

4. It is worth mentioning that Exide Pakistan Limited was also made defendants No.2&3 by Claimant. As products were purchased from defendant No. 1 who was falling within the definition of manufacturer as provided by section 2 (H) (III) of the Act, so names of defendants No. 2&3 were deleted.

5. Defendant No. 1 in his written statement is of the view that claim filed by Claimant is based on malafide; products were under the ownership of Exide Limited Company whereas defendant No. 1 is only a dealer; in fact company is responsible for products; products were overcharged which was due to negligence of Claimant hence no relief can be given to Claimant. He has prayed to exonerate him from any action.

6. Admittedly defendant No.1 Mr. Khalid Mahmood is the Dealer for Exide Company and he sold products to Claimant. As mentioned above he

is also a manufacturer because being a Seller he exercises control over the design, quality, construction or quality of the products. Consideration was too received by defendant No. 1. Undisputedly warranty cards were also issued by defendant No. 1 showing certain conditions including period of warranty as six months. Before expiry of warranty period which was still three months products became defective but defendant No. 1 did not take any action. He also did not deny receipt of legal notice sent by Claimant.

7. Defendant No.1 has referred a condition on warranty which is written in Urdu that “the decision of company about warranty shall be final” and he states that as company has refused the plea of Claimant so this Court now cannot enter in the dispute in hand.

8. Under section 12 of the Act, the liability of the person to a consumer who has suffered damages shall not be limited or excluded by the terms of any contract or by any notice. If it is presumed that warranty cards are neither contracts nor notices even than said condition is void under the law because it also amounts to limit the powers of the Court provided under the Act. Said condition, therefore, has no effect on the lawful rights of Claimant.

9. Defendant No.1 then referred condition No. 10 where it is provided that in case of overcharging warranty shall not be applicable. When asked from defendant No.1 that how he says that the products were overcharged, he maintains that it was so stated by company. When I inquired about any declaration in black and white by company or defendant No. 1, he states that company had declared it orally.

10. Above version of defendant No. 1, to my mind, also amounts to ‘Unfair Practices’ within the meaning of section 21 of the Act because it appears that all the decisions and rights were possessed by manufacturer and the conditions mentioned in warranty cards were to mislead a consumer.

11. I do not find any force in the contention of defendant No.1 that only the company is liable for action. If this view is endorsed, then a Seller who is also a manufacturer shall be given a license to play with the rights of consumers because generally the manufacturers of products are from other districts or other provinces. However, I must say that if an action is taken against defendant No.1, he has a right to recover his loss from company for whom he runs a franchise.

12. Ultimate result is that defendant No.1 is liable for action under the Act. This claim is, therefore, accepted. Defendant No.1 did not respond in spite of receipt of legal notice and even in Court he was not ready to accommodate the Claimant. Therefore, claimant is also justified for demanding the damages.

13. In pursuance of section 31 of the Act, I issue an order to Mr. Khalid Mahmood /defendant No.1 directing him to take following actions within seven days from today: -

- 1.** To replace the products or to return price thereof which is Rs. 95,00/-
- 2.** To pay an amount of Rs. 10,000/- as damages to Claimant.

14. File shall be consigned to record room after its due completion.

Announced
12.10.2012

(Sohail Nasir)
District & Session Judge
Judge Consumer Court
Rawalpindi.