

**IN THE COURT OF SOHAIL NASIR DISTRICT AND SESSIONS**  
**JUDGE/JUDGE CONSUMER COURT,**  
**RAWALPINDI**

(Case No. 112 of 29.11.2012)

Raja Mohsin Kamal son of Raja Ali Akbar, House No. 72, Street No. 16, Sector-2, Samarzar Housing Society , Adiyala Road, Rawalpindi.

**Vs.**

TCS Courier Service, Opposite GPO Saddar, Rawalpindi

**Present:** Claimant in person.  
Mr. Abrar Hussain advocate for defendant.  
Syed Ghous Jeelani Shah Defendant's representative.

**JUDGMENT**

1. By filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) claimant has maintained that he approached TCS/defendant Rawalpindi and got booked a shipment on 06.11.2012; it was for Kallar Kahar, District Chakwal; there was a tender in envelop; defendant assured that mail would be delivered on next day but it was not distributed accordingly; due to arbitrary, insolvent and dictatorial conduct of defendant claimant had suffered inconvenience, mental torture besides financial loss; he served legal notice (P-2) to defendant as required by section 28 of the Act. In prayer, claimant has set up his claim as under: -

a. Estimates profit of Tender	Rs. 1500,000/-
b. Charges of TCS Courier Service	Rs. 250/-
c. Legal Assistance expenditure	Rs. 10,000/-
d. <u>Mental and physical torture</u>	<u>Rs. 500,000/-</u>
<b>Total</b>	<b>Rs. 20,10250/-</b>

2. Defendant appeared and submitted its written statement. Specific defence was that shipment was in the name of one Mr. Irfan and on next day that was 07.11.2012 when defendant's Courier went for delivery, Mr. Irfan was not present in his office; Courier attempted to contact Mr. Irfan on his mobile number which was powered off; again on 08.11.2012 Courier approached at given address where Mr. Irfan was present and envelop was delivered to him.

3. In evidence claimant got his statement recorded as Pw-1 and he also produced documents as Ex. P-1 to P-4.

4. On the other hand Syed Ghous Jeelani Shah and Mr. Qaisar Aqeel had appeared as Dw-1 & Dw-2 respectively. Sole document Ex. D-1 (tracking record) was too produced by defendant.

5. I have heard arguments of both sides.

6. All facts of this case are under admission and only controversy is that if on 07.11.2012 Courier of defendant had gone to the relevant address or not and if he had gone there on that day whether he was bound to deliver shipment to any other person?

7. This is not the case of claimant that on 07.11.2012 he was present in the office of Tehsil Administration Kallar Kahar, where mail had to be delivered. Although he tried to say so verbally in arguments but his claim is completely silent in this context. Therefore, best available evidence before me is of Mr. Qaisar Aqeel (Dw-1). He repeated same facts which I have referred earlier keeping in view written reply of defendant. Claimant himself made cross-examination and his questions were suggestive which witness had replied in affirmation that on 07.11.2012 at 12:40 (noon) he went to the office concerned but Mr. Irfan was not there. He also answered that he made three telephone calls on mobile of Mr. Irfan which was powered off. He denied that he had placed a pressure on Mr. Irfan to make statement in his favour.

8. Above statement of Mr. Qaisar Aqeel could only be rebutted by Mr. Irfan. Claimant did not produce him in his support and even he did not make an oral or written request for his summoning as a Court witness. In these circumstances best available evidence cannot be turned down on the basis of presumptions.

9. Ex. D-1 a document prepared in ordinary course of business is a relevant paper. It has also not been denied or challenged by claimant. It shows that on 07.11.2012 at 09:19 am mail was received in Chakwal office and on the same day it was handed over to Courier who at 12:40 (noon) went to Mr. Irfan but he was not available. Mail was returned however it was delivered on 08.11.2012 to Mr. Irfan.

10. Claimant sates that documents in envelop were in fact tender in pursuance to an advertisement (P-4) and 07.11.2012 was the last date so defendant was bound to deliver the same in the office and not to Mr. Irfan. This version of claimant is not supported from his own document (P-4) because in advertisement there was mention that tender documents had to be send in the name of Administrator TMA, Kallar Kahar. If mail had the name of Administrator then of course it had to be delivered in the office to any official. But when it was in the name of specific person then it could not be stated that it was some official communication, therefore, Courier

*and defendant are right to say that when Mr. Irfan was not in his office and could not be contacted on telephone, then mail could not be delivered to any other person and this was the reason that on very next day that was 08.11.2012 mail was handed over to Mr. Irfan when he was found present in his office.*

*11. Whatever has been discussed above in the light of that I find no force in this claim hence it is dismissed. No order as to cost. File shall be consigned to record room after its due completion.*

**Announced**  
17.12.2012

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

*It is certified that this judgment consists of three pages. Each page has been dictated, read, corrected and signed by me.*

**(Judge Consumer Court)**  
Rawalpindi.