

In The Court Of Syed Maruf Ahmedali Presiding Officer
District & Sessions Judge District Consumer Court
Lahore.

Ghulam Sarwar Cheema V/S Toyota Walton Motors

Order.

The Petitioner has filed a claim of damages amounting to Rs.1100484/-under the Punjab Consumer Protection Act 2005 against the Respondent.

2 Brief facts, according to the Petition are that on 29.06.2007 Petitioner along with his family was traveling from Islamabad to Lahore in his Toyota Land Cruiser (Prado) bearing registration No. LW-004 Model 2007 which he had imported through Indus Motors Company Karachi on 07.06.2007 for a consideration of Rs. 4950000/-. met an accident near Kharian ,as a result, three tyres bursted and axels were severely damaged. The Petitioner reached Lahore late in the night .On 30.06.2007.the Petitioner contacted the Respondent workshop to get his vehicle repaired. After summary inspection the Respondent advised him that some parts were required to be replaced in addition to various other jobs and those parts which are not available in the Respondent workshop are to be imported. The Petitioner imported the required parts. It is alleged that the Petitioner was intimated that the parts which have been imported do not fit in the vehicle The Petitioner again imported certain parts. It is

further alleged that the Respondent took their time for assembling the imported parts, but again informed the Petitioner that the imported parts did not fit in the vehicle. Then finally the Petitioner was informed on 14.07.2007 that the vehicle be got checked from some other workshop. The Petitioner contacted M/S Madina Motors at Ferozepur Road Lahore on 16.07.2007, who put the vehicle on the road on the same day. That due to the defective, faulty and unprofessional service of the Respondent, the Petitioner is entitled to the return of consideration, costs of parts and damages amounting to Rs. 1100484/-The Petitioner also issued a Legal Notice to the Respondent on 07.08.2007 which was not responded to . Hence this claim.

3 The Respondents were summoned. Who contested the claim of the Petitioner through their written statement. The Petitioner in order to prove his case himself appeared in the witness box and tendered in evidence Photo Stat Copies of documents Mark A to Mark L and Ex-P/1 to Ex-P/4. On the other hand RW-1 Muhammad Imran Operation Manager appeared on behalf of the Respondent. The counsel for the Respondent tendered in evidence Letter dated 17.07.2007 Mark R/1 Photo Stat Copy of Insurance Receipt Mark R/2 and closed their evidence.

4 It is contended by the counsel for the Petitioner that the Respondent workshop provided faulty and defective service to the Petitioner and the Petitioner remained stranded in their workshop for about two weeks and suffered a huge loss in business situated at Islamabad. He has further contended that the Respondent Company 2/3 times provided the specification to import the spare parts of his vehicle. But every time told him that these spare parts could not be fitted in the vehicle and wasted the time and money of the Petitioner. He has further contended that after about two weeks the Respondent Company towed his vehicle to Madina Motor workshop Ferozepur Road

Lahore where the defect in the vehicle was diagnosed, who fitted the right front wheel brake system, which could not be fitted by Respondent due to lack of expertise. He has further contended that the Petitioner suffered agony for about twenty days in the hands of the Respondent workshop. He has prayed that he be granted damages amounting to Rs. 1100484/- including costs of spare parts.

5 On the other hand the counsel for the Respondent has contended that they had completed the work of the Petitioner vehicle and the delay, if any, had occurred, was due to the import of the spare parts by the Petitioner. He has further contended that there is no written contract between the parties. The Respondent has further contended that the wheel bearings imported by the Petitioner was without Anti Lock Brake System therefore, it could not be installed. He has further contended that the Jeep of the Petitioner was insured with the Universal Insurance Company who have issued a Receipt which is Mark R/2 that the Petitioner had received an amount of Rs. 190999/- from the Insurance Company on 24.08.2007. The Petitioner has also issued an Appreciation Letter on 17.07.2007. Therefore; he is estopped by his act and conduct to file the present Petition. The Petitioner has failed to prove his claim. It is prayed that this Petition be dismissed.

6 After hearing the arguments of both the learned counsel for the Parties and perusing the record. From the evidence given by PW-1 Ghulam Sarwar Cheema who is Petitioner in this case. It is evident that the vehicle of the Petitioner was repaired by the Respondent workshop. It is also an admitted fact that some spare parts were imported by the Petitioner which could not be installed in the vehicle as they were not according to the specification. It is also an admitted fact that the repair of the vehicle took about two weeks, as the delay occurred due to the time consumed by the Petitioner on the import of certain spare parts.. No time frame was given by the Respondent workshop to repair the

vehicle of the Petitioner, nor there was any written contract between the parties, that how much time it would take to repair the vehicle of the Petitioner. The Petitioner was not bound by the Respondent workshop to remain in their workshop for two weeks. The Petitioner stayed in the workshop according to his own will. The allegation of the Petitioner that he suffered a business loss at Islamabad amounting to Rs. 400000 /-No detail has been given by the Petitioner, that what business he was running in Islamabad in which he had suffered a loss of Rs. 400000/- nor he has proved the same. During cross examination the Petitioner has admitted that his vehicle is insured, but he denied the fact that he has received anything from the Insurance Company.

7 On the other hand RW-1 Muhammad Imran Operation Manager of the Respondent Company, had categorically stated that the Universal Insurance Company has issued a Receipt that the Petitioner has received an amount of Rs. 190999/- from the Insurance Company on 24.08.2007 in satisfaction of his claim for the repairs conducted on his Jeep. The Photo Stat Copy of the Receipt is Mark R/2. He has further stated that the Petitioner has signed the Repair Order Mark G to his entire satisfaction and has also issued an Appreciation Letter dated 17.07.2007 which is Mark R/1. During cross examination this fact has not been rebutted by the Petitioner therefore, it stands proved that the Petitioner has already received an amount of Rs. 190999/-, the expenses incurred of the repair on his vehicle from Universal Insurance Company on 24.08.2007 according to Mark R/2. All the repair work of the vehicle of the Petitioner was completed by the Respondent workshop as the Wheel Bearings were without Anti Lock Braking System therefore, they were not installed. The Petitioner wanted that the Respondent should modify and fit the same in his vehicle, but the Respondent refused to modify the genuine parts, as they are authorized Dealers of Toyota Company. There after the Petitioner got the same modified from Madina Motors and got fitted in his vehicle.

8 During cross examination the Petitioner who has appeared as PW-1 has stated that he did not receive anything from the Insurance Company. Receipt Mark R/2 proves that the Petitioner is not telling the truth. He had received an amount of Rs.190999/- from the Universal Insurance Company on 24.08.2007. This Petition has been filed by the Petitioner on 14.11.2007. After about three months of receiving the claim from the Insurance Company. The Petitioner had concealed this fact and has not approached this Court with clean hands. The Petitioner wants to derive double benefit from the accident of his Jeep. He has received a huge amount of Rs.190999/- from the Insurance Company and now he wants to extract another amount through this Court from the Respondent workshop. Which under the law he is not entitled to do so.

9 Before parting with this Order, Respondent counsel had filed an Application under Section 151 CPC for returning of uncertified copies submitted in evidence by the Petitioner. The documents objected by the counsel for the Respondent are Mark A to Mark L which were tendered in evidence in his presence on 21.02.2007 and the objection was filed by the counsel for the Respondent after about five weeks i.e. after five dates of hearings. Out of these documents i.e. 10 documents Mark A, Mark B, Mark E, to Mark K stands admitted during cross examination by RW-1 who has appeared on behalf of the Respondent. Now the Respondent is estopped by his act and conduct to challenge the same. On the other hand the Respondent has taken a contradictory plea, as he has also tendered during evidence Photo Stat Copy of the Receipt Mark R/2 issued by the Universal Insurance Company. Hence the Application under Section 151 CPC is dismissed. Reliance is placed on 2005 MLD 1577.

In view of the aforesaid reasons, the Petitioner has failed to prove his case and has not approached this Court with clean hands and is not entitled to the relief prayed for. As a consequence the claim of the Petitioner is dismissed. However the parties are left to bear their own costs. Reliance is place on Bombay Brazzerie V/S Mulchand Agarwal 2002 Ind Law (NCDRC 191)

File be consigned to record room after due completion.

Announced

Presiding Officer

22.05.2008

District Consumer Court

Lahore.

Certificate

Certified that this Order consist of Seven (7) pages which have been dictated,read,corrected and signed by me.

Presiding Officer

22.05.2008

District Consumer Court

Lahore.