

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

RAWALPINDI

(Case No. 20 of 21.03.2012)

Rameez Riaz son of Muhammad Riaz resident of village Lodhran Post Office Sagari, Tehsil and District Rawalpindi.

(Claimant)

Versus

- 1.** *Mian Muhammad Arshad Rafiq (Deceased) son of Haji Muhammad Rafiq, Iron merchant, 307-A Jinnah Road, Rawalpindi.*
- 1-(a)** *Mian Muhammad Ashraf S/o Haji Muhammad Rafiq Iron Merchant, 307-A, Jinnah Road, Rawalpindi.*
- 1-(b)** *Zafar Iqbal Sales Man Iron Merchant Shop namely Mian Muhammad Arshad Rafiq Iron Merchant, 307-A, Jinnah Road, Rawalpindi.*
- 1-(c)** *Haji Muhammad Rafiq.*
- 1-(d)** *Muhammad Aslam*
- 1-(e)** *Muhammad Akram*
- 1-(f)** *Muhammad Saeed all sons of*
- 1-(g)** *Mst. Shahida Musarrat daughter of
Haji Muhammad Rafiq all resident of A-662/D/5 Street no. 39
Mohallah Mohanpura, Rawalpindi.*

(Defendants)

Present: *Mr. Hassan Mabroor Advocate for Claimant.
Mr. Muhammad Azeem Sheikh Advocate for defendants.*

JUDGMENT

01. *Initially this complaint under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) was filed against Mian Muhammad Arshad Rafiq. Process was issued against him and on the next date it was reported that he had died one year ago. Thereafter, with permission of this Court an amended claim after insertion the names of all legal heirs of Mian Muhammad Ashraf excluding Mr. Zafar Iqbal (defendant 1-b) was submitted by claimant.*

02. *Version of Mr. Rameez Riaz (Pw-2) in his claim was that defendant No. 1-(b) was the salesman on Iron Merchant Shop owned by Mian Muhammad Arshad Rafiq; claimant on 07.02.2012 had purchased 20 (twenty) Iron griders (hereinafter to be called product) weighting 28 KG each with specification of 6"x4' for construction of a buffaloes shed against a consideration of Rs. 45500/- (6x4 means. 6-depth of product in inches and 4 pond per feet); before purchase, claimant had specifically disclosed the purpose of product on which Mr. Zafar Iqbal (defendant No. 1-B) assured that product offered to be sold was of best quality; on his recommendation Claimant bought product and laid on roof of shed which assignment was completed*

on 11.02.2012; on 12.02.2012 claimant along with his cousin Mr. Umar Khayyam (Pw-3) was sitting under the roof because of drizzling when, at about 02:00 pm roof collapsed due to defective and faulty product; this resulted into serious injuries to Claimant and Mr. Umar Khayyam; product was not only defective but under specification; legal notice (P-11) was served to defendants but they did not bother to reply.

03. Claimant had setup his claim as under: -

- a. Rs. 73500/- (seventy three thousand & five hundred) an amount for medical treatment of Mr. Umar Khayyam.
- b. Rs. 26500/- (twenty six thousand & five hundred) an amount for purchase of medicine and expenses for hospital.
- c. Rs. 45500/- (forty five thousand & five hundred) an amount for defective product.
- d. Rs. 5,00,000/- (five lac) compensation/damages for mental/bodily torture/pain, hardship and loss in education.

04. All defendants submitted their written statement jointly. In preliminary objections it was maintained that defendants were not responsible for any cause and complaint could not proceed against them; amendment in complaint was made about the name of Mr. Zafar Iqbal Sales man without permission of Court, which was malafide; no notice was served to defendants, hence complaint was liable to be dismissed; product was wrongly used by Claimant as evident on perusal of photographs (P-22 to 24); medical claim was false and vexatious because all facilities were available in DHQ hospital and said hospital was not under obligation to refer a patient to any private hospital.

05. On facts it was admitted that product was sold by defendant No. 1-A but without any dialogue between Claimant and him. Prayer was made for dismissal of complaint.

06. In evidence Mr. Farbar Hussain (Junior Clerk Emergency Department of DHQ Hospital), Mr. Rameez Riaz (claimant), Mr. Umar Khayyam, Mr. Bilal Ahmad and Mr. Tauqeer Ali had appeared as Pw-1 to Pw-5 respectively. Following documents were produced in evidence by Claimant: -

S. No	Exhibit	Nature of document
1	P-1	Hospital ticket of Rameez Riaz claimant
2	P-2	Hospital ticket of Umar Khayyam
3	P-3	Copy of outdoor of patient register
4	P-4	Affidavit of Rameez Riaz (Pw-2) for evidence
5	P-5	Affidavit of Umar Khayyam (Pw-3) for evidence
6	P-6	Affidavit of Bilal Ahmad (Pw-4) for evidence
7	P-7	Affidavit of Tauqeer Ali (Pw-5) for evidence
8	P-8	Receipt of purchase of product

9	P-9	Visiting card of shop
10	P-10	Receipt of TCS
11	P-11	Legal notice
12	P-12	Medical prescription of Umar Khayyam
13	P-13	Medical expenses of Umar Khayyam
14	P-14-16	Pathological reports of Umar Khayyam
15	P-17	Medical prescription of Umar Khayyam
16	P-18	Pathological report of Umar Khayyam
17	P-19 to 20/3	Payment receipts for Hassan Clinic
18	P-21	Medicine purchase receipt
19	P-22 to 24	Photographs

07. On the other hand only Mr. Muhammad Ashraf (defendant No.1-A) appeared as Dw-1 on behalf of all defendants. They did not opt to produce any documentary evidence.

08. To arrive at a just decision of case, this Court had examined Mr. Muhammad Khalid Hafeez SDO as Cw-1 who was appointed as local commission for expert opinion. Dr. Khalid Abbas Janjua Director Emergency D.H.Q Hospital was too examined as Cw-2.

09. I have heard arguments of both sides at length.

10. Learned counsel for defendants argues that claim was filed after expiration of statutory period of 30 days and no specific cause was shown, therefore, application for condonation of delay filed by Claimant is liable to be rejected.

11. Claim was filed on 21.03.2012 whereas cause of action accrued to Claimant on 12.02.2012 which fact is undisputed. Under section 28 (4) of the Act a claim by Consumer can be filed within 30 days of arising of cause of action. It is also provided in same provision that Consumer Court can allow a claim to be filed after 30 days within such time as it may allow, if it is satisfied that there is sufficient cause for not filing the claim within specified period.

12. In application for extension of time it has been asserted by Claimant that he and his companion were buried under debris and they suffered un bear able pain and agony, so they were not in a condition to approach this Court; Mr. Umar Khayyam was seriously injured who also had undergone a surgery so it was also not possible for him to knock the door of Court within time.

13. Above plea raised by Claimant was involving factual dispute hence he had to prove the same through evidence. In his affidavit (P-4) claimant as Pw-2 did not state any word about reason for filing the claim

after legal period. For the sake of arguments if it is believed that Claimant had sustained injuries, even then he has no good cause for seeking extension in time. Let us presume that Mr. Umar Khayyam was seriously injured having a fracture and he had undergone process of surgery, but this condition was not of Mr. Rameez Riaz. His outdoor patient ticket (P-1) does not show any fracture or serious condition at all. Similarly, all medical prescriptions and documents are with reference to Mr. Umar Khayyam and not with regard to Mr. Rameez Riaz. It means that Claimant was not having any such medical problem which could restrain him to approach the Court. When it is so then how Claimant could say that he had sufficient cause for not filing the claim within the prescribed time.

14. I, therefore, hold that claim filed by Claimant is barred by limitation and extension cannot be granted, hence application in this regard is dismissed.

15. Next it is maintained by learned counsel for defendants that legal notice was not issued to defendants, which is violation of section 28 (3) of the Act; notice available on file was sent to Mr. Muhammad Arshad Rafiq that means to a dead person, which amounted to non-fulfillment of relevant provisions of the Act; notice even if sent to deceased was not received to any of defendants.

16. On the other hand, learned counsel for Claimant is of the view that notice was sent to the shop from where product was purchased and as on visiting card there was the name of deceased so in notice, he was addressed for service.

17. It is an admitted fact that Mian Muhammad Arshad Rafiq had died most probably in the beginning of year 2011 whereas product was purchased on 07.02.2012. Ex. P-8 is the receipt for purchase of product that does not show the name of any shop or Firm which in fact is a complimentary note pad of one 'Jamal Steel Mills'. However, Ex. P-9 that is visiting card is the relevant document and under admission by defendants. It has the particulars as 'Mian Muhammad Arshad Rafiq Iron Merchant A-307 Jinnah Road Rawalpindi'.

18. Mr. Muhammad Ashraf (Dw-1) in cross-examination admitted this document (P-9) and he also added that he pays income tax in the name of his deceased brother; schedule of holidays is also in the name of deceased who had died due to heart attack; payment was acknowledged through receipt (P-8).

19. Admittedly, it is no body's case that earlier to deal parties knew each other. In this background Claimant was justified to send a notice keeping in view particulars provided on visiting card (P-9) which document never spoke about death of Mian Muhammad Arshad Rafiq or any other person as 'Proprietor' of the shop. Therefore, issuance of notice to deceased was with bonafide intention.

20. Rule 13 of the Punjab Consumer Protection Rules, 2009, has prescribed the procedure to be followed by a Claimant. It says as under: -

"(2) The claim shall contain precise particulars of the claimant, defendant....."

21. Preamble of the Act states for protection and promotion of the rights and interests of the consumer and speedy Redressal of his complaint. So keeping in view the fact that generally a product is to be purchased from a retailer the proprietor or owner of whom is too not known to a consumer the interpretation has to be made in a way that Claimant has to give the name, description and address of opposite party or parties so far as they can be ascertained unless it is established from evidence that he deliberately avoided to do so.

22. I do not believe that notice (P-11) was not received at the given address on many reasons. Firstly receipt of TCS (P-10) which has the same address has never been disputed by defendants or claimed to be forged. Secondly Claimant in his examine-in-chief specifically stated about issuance of notice and it's no reply from defendants' side. Thirdly in cross-examination said portion was not challenged even by way of imaginations by defendants, hence under the settled principles of law it can be safely presumed that defendants have admitted issuance of notice and its receipt. Finally when Mr. Muhammad Ashraf (Dw-1) was cross-examined on this point he did not deny receipt of notice but stated that it was not in his knowledge that Mr. Zafar Iqbal (defendant no. 1-B) had received notice or not?

23. It is, therefore, held that notice was served to defendants hence requirement of law was complied with.

24. This is a case of defective product. Under section 4 liability of defective product is against 'manufacturer' who has been defined under section 2 (h) of the Act, which is as under: -

"Manufacturer" includes a person or entity who-

- i. is in the business of manufacturing a product for purposes of trade or commerce;

- ii. labels a product as his own or who otherwise presents himself as the manufacturer of the product;
- iii. as a Seller exercises control over the design, construction or quality of the product that causes damages;
- iv. assembles a product by incorporating into his product a component or part manufactured by another manufacturer; and
- v. is a Seller of a product of a foreign manufacturer and assumes or administers warranty obligations of the product, or is affiliated with the foreign manufacturer by way of partial or complete ownership or control; or modifies or prepares the product for sale or distribution.

25. It is agitated by learned counsel for defendants that relief can be demanded only against a 'Manufacturer' whereas none of defendants fall within said definition. I do not find so in view of the words used in clause-(iii), because defendant No. 1-A being Seller was having control over the product which includes its quality, hence to my mind defendant No. 1-A is a manufacturer within the meaning provided under the Act.

26. On first date of appearance after issuance of notice to Mian Muhammad Arshad Rafiq, that was 31.03.2012, it was disclosed that he had died. Thereafter on the next date list of legal heirs of deceased was filed. All legal heirs of deceased were allowed to be impleaded with the consent of other side. Unfortunately when amended claim was filed, amendments were also made in para No. 1 by introducing defendant No. 1-B (Mr. Zafar Iqbal) as sales man on the shop. Further amendment was made that defendants nos.1-A and 1-B had sold product to claimant. Permission of Court was not there at all to amend the contents of claim or to insert the name of Mr. Zafar Iqbal/ defendant No. 1-B, who was not legal heir of deceased. Therefore I have no hesitation to hold that amendments were made with malafide intention and to cover the lacuna found in original claim.

27. Now, I come to actual controversy between parties. Admittedly product was of specification 6"x4' and of 20-Kg each. The basic question before me is that whether product was defective in quality or some wrong picture has been attempted to be presented. Before I comment on this I will like to refer some relevant portions of cross-examinations of witnesses appeared in this case.

Mr. Rameez Riaz (Pw-2)	He had obtained advices from contractor. He did not consult an engineer or expert. He had also purchased beam on the advice of contractor.
Mr. Bilal Ahmad Masson (Pw-4)	He is a mason for the last six years. He had constructed only one or two roofs consisted of shed. At the time of installation of girders he had informed the claimant that these were light. He does not remember that if he had forbidden the claimant to install these girders.
Mr. Tauqeer Ali (Pw-5)	He had stated on the basis of estimation that girders were defective however, he is not an expert.
Mr. Muhammad Khalid Hafeez SDO Building (Cw-1)	Girders were under capacity and this was sole reason for collapse of roof. Specification can be told by an Engineer keeping in view distance of wall to wall, girder to girder and load of roof.

28. Under section 5 of the Act a product shall be defective in construction or composition if at the time the product was manufactured, material deviation was made from the manufacturer's own specification, whether known to the consumer or not.

29. Vide an order dated 17.07.2012 my learned predecessor with the consent of parties had appointed Mr. Muhammad Khalid Hafeez SDO Building as a local commission for getting an expert opinion. The reference to learned local commission was as under: -

1. Whether the roof of shed collapsed/caved-in due to defective/low quality of girders?
2. Whether the roof collapsed/caved-in due to some other defect of building material?
3. Whether the roof collapsed/caved-in due to construction procedural fault/negligence of mason?

30. As mentioned earlier he was examined as Cw-1. His entire report is of much importance hence reproduced as under: -

Report of the Local Commission

The honourable Court appointed the undersigned as Local Commission with the direction to visit the site and submit report as per court's direction.

Undersigned visited the site on 20.07.2012 at 03:00 pm. Both parties (Mr. Rameez Riaz S/o Muhammad Riaz, the complainant, and Mr. Muhammad Ashraf, the Respondent, were present at site.

The site was thoroughly checked and technical observations were made on these lines.

- i. Nominal size of girders.
- ii. The placement of steel girders for roofing.
- iii. Construction procedure.
- iv. Collapse of Roof.
- v. The construction work.

The attached pictures titled as Pic: 01 to Pic: 16 exhibit the site condition in detail.

After the site observation the matter was discussed with the complainant and the respondent and following facts were noted by undersigned:

a) Nominal size of girders

The girders were of nominal size of 6x4. Here the first digit 6 describes the depth of girder in inches while second digit 4 is its weight in ponds per foot. The girders which were used at site are 16 feet in length having 28 Kgs weight. This fact shows that the weight of these girders is 1.75 Kg or 3.85 ponds per foot instead of nominal 4 ponds per foot. The depth of girder was 5.25" instead of 6".

b) The placement of Steel Girders

These girders were placed on bricks/concrete block walls with a clear span of 14'-6". The girders had center to center distance of 5'.00". Local materials "sarkanda and bamboo" were used as roofing material with polythene sheet for water proofing and an earthen layer above it.

c) Construction Procedure

The shed was constructed with brick and concrete columns on front side. Above these columns concrete beam was provided. Spacing between columns was irregular ranging from 4'to10'. On the back side, the existing concrete block boundary wall was raised by doing brick work above it. To make this arrangement stable brick columns were added at intervals along with this wall. The present and collapsed building showed that concrete beams were also added in the structures parallel to steel girders. The level of these beams was 6" below the steel girders. The concrete beams also collapsed along with roof. The collapsed beams were checked and it was observed that they were under-reinforced and quantity of steel was too less to carry load and perhaps due to this fact, the roof with steel girders was opted to be laid. Generally, the construction work was not done by experienced and expert masons and was done in contrast to normal Engineering practices.

d) The lower carrying capacity of girders

Considering the thickness of earth used for roof as 1", the weight of Sarkanda and Bamboos was used for roofing and the placement of girders at 5' center to center distance it has been found that these girders can only be placed safely for a clear span of 6' to 8' where as those were used for clear span of 14'-6". These girders were highly under capacity and were prone to collapse due to over stressing and lateral buckling. This happened as the load of roof increased due to rain in the area and wetting of earth over this roof.

e) Discussion with both Parties

The case was discussed with the complainant at site. As per his knowledge for 6x4 girder, 6 stands for depth and 4 for width of girder. He was not aware of load carrying capacity of those girders and did not know the required capacity for his roof. He pointed out that he went to shopkeeper (Respondent) and asked him to provide him with girders to make a shade for cattle and Mr. Muhammad Ashraf (Respondent) recommended that size of girder for shed. He bought those girders and used them as per advice of Respondent.

Mr. Muhammad Ashraf (Respondent) told that his qualification was matric and he had been selling steel products for last 22 years. He also said that he was not manufacturer of those

girders but he was selling steel girders made by Malik Steels Lahore/Karachi. Moreover he did not know the meanings of term 6x4 used for that girder. He said that he sold the girders according to size, length and weight as demanded by the customers.

f) The Market survey.

The undersigned visited different shops in the market on City Sadar road for purchase of steel girders. It was observed that most of the shopkeepers and their staff did not know the meaning of terminology used for these products especially for steel girders. Similarly they also were not aware of the strength and load carrying capacity of the products. However they were selling products as per length and total weight of each unit.

Conclusions:

The honourable Court directed to submit report after spot inspection on the following points: -

- a.** Whether the roof of shed collapsed, caved-in due to defective/low quality of girders?
- b.** Whether the roof collapsed/caved-in due to some other defect of building material?
- c.** Whether the roof collapsed/caved-in due to construction procedural fault/negligence of mason?

In view of the observations cited above the point wise conclusions of undersigned are as under: -

a. The girders were of too low in capacity to bear the load of roof with 14'6" clear span. The only reason for the failure of the roof was the low capacity of the girders. These girders when placed 5' center to center distance are safe for 6' to 8' span of roof but they were used for 14'-6" clear span which is almost double. Due to this fact they latterly buckled, twisted and sagged for collapse.

b. The supporting structure though was not constructed properly and as per required standards was not immediate cause of failure of roof.

c. The collapse of roof was primarily due to unawareness, of the mason or skilled labour who erected this shed, about the required size of girder or the capacity of the material they bought for their shed. The complainant, according to his statement, relied on the advice of the respondent, who was neither engineer or technical expert nor he visited the site to access the field conditions or requirements. As per normal building practices, the owner or the client buy the building materials as per their own requirement on the advice of any expert. No expert has been referred in this case.

(Most of the lines underlined by me)

31. There is much difference between words 'defect' and 'under capacity'. This is not the case of Claimant that there was a deviation from specification mentioned at product. Instead of 4 ponds, according to expert it was 3.85 ponds per foot and for depth it was 5.25 feet instead of 6 feet. Mr. Khalid (Cw-1) had clarified that difference of .15 was not fatal in this case. He said that product was under capacity, which means that the

weight of roof which was placed on product was beyond its ability and this fact is also mentioned in report. The report also had made it clear that product was safe for 6 feet to 8 feet span of roof but griders were used for 14 feet 6" clear span which was almost double. It means that if the load as per capacity of product had to be placed, then there was no question of collapse and if in that situation the disaster had taken place then the query of defective product had to arise.

32. Claimant was under obligation to seek expert advice before he had to purchase product. Mere on asking of a mason who did not possess skill, Claimant had procured product of above mentioned specification. There was a chance for Claimant not to install the product because he was informed by Mr. Bilal mason (Pw-4) in this regard and even then he opted to use the product for roof construction.

33. Besides above it is also proved in this case that construction was of low quality; collapse of roof was primarily due to unawareness of the mason or skilled labour who erected this shed, about the required size of girder or the capacity of the material they bought for their shed.

34. In view of above I have no hesitation to say that the product was not defective at all and when it is so, Claimant has no case against defendants under the Act. I, therefore proceed to dismiss the claim with no order as to the cost. File shall be consigned to record room after its due completion.

Announced
22.09.2012

(SOHAIL NASIR)
District & Sessions Judge/
Judge Consumer Court,
Rawalpindi.

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

(SOHAIL NASIR)
District & Sessions Judge/
Judge Consumer Court
Rawalpindi