

**IN THE COURT OF SOHAIL NASIR DISTRICT AND SESSIONS**  
**JUDGE/JUEGE CONSUMER COURT,**  
**RAWALPINDI**  
(Case No. 85 of 08.10.2012)

Mst. Sabiha Mazhar

**Vs.**

OCS Pakistan (Pvt) Ltd.

**Present:** Syed Ali Abbas Kazmi Advocate for claimant  
Khawaja Muhammad Arif Advocate for defendant

**JUDGMENT**

**01.** By filing this claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter to be called the Act) Claimant has asserted that she hired the services of defendant for International Shipment No. 96-250-912-081 for United State of America on 02.04.2012 in lieu of consideration of Rs. 6500/-; after considerable time when claimant inquired about failure of delivery of above-mentioned shipment, it was reported that said shipment was misplaced by the staff of defendant at its Express Centre, Tameez-ud-Din Road, Rawalpindi; shipment was containing three pieces ladies stitched shoes of Rs. 7400/-, one men's stitched Kurta of Rs. 2200/-, one pair of men's Sandal of Rs. 12,00/-, two gents T-Shirts of Rs. 1500/-, one Ladies top of Rs. 1200/-, two artificial rings of Rs. 800/-, and one artificial bracelet of Rs. 800/-; thereafter, claimant was advised by defendant to file a claim; while doing so claimant forgot to mention one artificial bracelet; in July 2012 defendant offered claimant for re-imbusement of shipment charges only which was refused by claimant; in spite of repeated visits of claimant to the offices of defendant no heed towards her genuine demand was paid; defendant provided defective and faulty services which caused damage to claimant; claimant issued/served a legal notice to defendant but of no avail.

**02.** In her prayer clause, claimant has setup her claim as under: -

<b>1</b>	Mental torture & Agony	Rs. 2,00,000/-
<b>2</b>	Loss of time	Rs. 2,00,000/-
<b>3</b>	Disturbance of claimant's relations	Rs. 2,00,000/-
<b>4</b>	Substantial/Monetary loss	Rs. 21,600/-
<b>TOTAL</b>		<b>Rs. 6,21,000/-</b>

**03.** Defendant appeared through its representative as well as learned Advocate and filed written statement.

**04.** Both sides adduced their evidences making reliance on statements of Sabiha Mazhar claimant as Pw-1 and Mr. Babar Aziz Ch. Branch Manger as Dw.1.

**05.** Claimant produced documentary evidence as Ex. P-1 to P-4 whereas defendant relied on documents Ex. D-1 to D-5.

**06.** I have heard arguments both sides.

**07.** Facts under admission because of non denial or not challenged in cross-examinations on either of the witnesses are as under: -

- i.** Claimant is a consumer and defendant is services provider as defined under the Act.
- ii.** Claimant, on 02.04.2012, hired the services of defendant for International Shipment which was for U.S.A for a consideration of Rs. 6500/-.
- iii.** Details of articles of shipment were disclosed by claimant but not value thereof.
- iv.** Shipment till today is not traceable and reported finally to have lost.
- v.** Claimant approached defendant many a times but of no consequence.
- vi.** Claimant served legal notice to defendant which was not replied at all.
- vii.** Defendant offered 100 US dollars to claimant as freight charges against claim, which was not accepted by claimant.
- viii.** Claimant served substantial loss of Rs. 21600/- only (see paragraph 8 on merits of written statement).

**08.** Learned counsel for defendant maintains that under section 3 of the Carriers (Act No.III of 1865) defendant is not liable for any loss because claimant had not declared value of articles. He also contends that as claimant did not ask for insurance in terms of section 4 of the same Act hence payment can be made only at the rates fixed by carrier.

**09.** I have examined relevant provisions of Carriers Act, as referred by learned counsel for defendant. Section 3 of the same says for disclosures of value and description of property and not only the value as argued by learned counsel for defendant. To the extent of description of property, the receipts (P-1 & D-3) are quite specific which detail is the same that has been mentioned in claim by claimant.

**10.** Referring to section 4 of the Carriers Act, it does not say about any insurance by claimant and at the most it is about for the risk undertaken in carrying property exceeding in value one hundred rupees and of the descriptions aforesaid at such rate of charges as he may fix.

**11.** The receipts show that no value of property was declared by claimant and for insurance the word "yes" was struck. Even if it is

*presumed that claimant did not offer for insurance, even then defendant cannot take protection of section 4 of the Carriers Act, on the reasons as mentioned earlier that it is not in relation to insurance by claimant rather it is an obligation for carrier to require payment for the risk undertaken.*

**12.** *Last but not least defendant also cannot claim any immunity on the basis of section 3 or 4 of the Carriers Act, because Punjab Consumer Protection Act under section 3 clearly says that “the provisions of this Act, shall be in addition to and not in derogation of the provisions of any other law for the time being in force”.*

**13.** *Learned counsel for defendant also maintains that terms and conditions were also there over leaf of the receipts ( P-1 and D-3) and once claimant signed it, he accepted terms and conditions hence he is bound by a contract for which he can be given only U.S one hundred dollar as compensation.*

**13.** *The receipts produced by both sides were having no printed of terms and conditions; therefore, on Court directions a blank receipt has been produced by defendant which is marked as C.1. Terms and conditions printed are of minimum font size, which is very difficult to read. These terms and conditions shall not be binding on claimant not only because of reason mentioned by the but also on the reason that there is no evidence from defendant side that these terms and conditions were confronted to claimant and thereof, he had signed the same.*

**14.** *Even otherwise section 17 of the Act, makes the issue quite simple when it says that “ the liability of a person by virtue of this part to a person who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice”.*

**15.** *Learned counsel for defendant has also relied on NLR-1998 Before Rasheed Ahmad Razvi.J.(Karachi) suit No. 612 of 1978 dismissed on 06.04.1978. Raja Fakhar Abbas, Etc Vs. Karachi Metropolitan Corporation, which I have also examined. This judgment is with reference to is specific relief Act beside Sindh Provincial Local Government 1772 Ordinances. The facts and circumstances also have not bearing with the affective and circumstances of this Court.*

**17.** *In view of above, now it is to be seen that defendant had acted with due care and caution to insure the delivery and what conduct of defendant was when it was approached by claimant. Undoubtedly, the services by defendant to claimant was for safe delivery of property to its proper destination within the limited period and for that it had charged the*

amount of its choice. Simply to say that the offices of defendant in Rawalpindi once forwarded the shipment to Karachi and from there to Germany, from where property was loss will not provide in exception to defendant.

**18.** Property was delivered to defendant on 02.04.2012 which had to be in the possession of consignee within five days. What to say about five days, after passing of about five months parcel whereabouts are not known. Due care and caution can be resolved in view of conduct of defendant which is evidence from its own documents (Ex. 5). It is complaint by a claimant to defendant which was received on 24.04.2012 and the note recorded by defendant's offices on this time is after about three months i.e. 19.07.2012. Slackness on the part of the defendant is good answer against him that he did not behave in a manner which can be accepted from a service provider to a consumer. Therefore, I have no hesitation to say that defendant did not act with due care and caution and his conduct after faulty services was also not up to mark. His slackness is also evident when it is found that defendant even did not bother to reply to the legal notice sent by the claimant to it.

**19.** In view of above claimant has succeeded in her claim hence this claim is accepted.

**20.** Coming to question of relief, however, I have to ascertain that for what relief claimant is entitled.

**21.** In claim there is no mentioned about any fee paid to her advocate by claimant hence to introduce this fact in evidence will be consider beyond pleadings. The certificate of advocate " P-4" is also undated and its copy was never placed when the claim was filed, therefore, this claim can not be awarded to claimant.

**22.** Similarly, what kind of mental torture to claimant and disturbance of her relations to when consignee can arise, for this also I find no good answer. Evidence of claimant is completely silent that what those specific events were after loss of shipment which can be of evidence to show abnormal states of man of claimant. Similarly disturbance of relations just an attempt to make a claim on the reason that consignee is real son of claimant and not stranger for her. However, it is right to say that the claimant is repeatedly approached the defendant hence she rightly claim damaged for loss of time but the worth which she asked i.e. 2,00,000/- ( two Lac) is not appropriate.

**23.** *In view of above I in pursuance to section 31 of the Act, issue an order to defendant providing it to take following actions within the period of fifteen days from today: -*

- 1.** *To return the consideration of Rs. 6500/- to claimant which was received for sending the property to U.S.A.?*
- 2.** *To pay Rs. 21600/- the price of property which is described in receipts.*
- 3.** *To pay Rs. 10, 000/- (one Lac) as compensation to Claimant for loss suffered by claimant due to negligence of defendant.*

**24.** *In terms of section 31 “d” of the Act, I also issue an order to defendant to take action with a period of fifteen days from today regarding proper printing and with reasonable font size of terms and conditions on the receipts with further directions that under said terms and conditions there will be a certificate by the consumer under his signature that he has accepted said terms and conditions. Defendant shall also display in all his offices the terms and conditions at a proper place in their offices for consumer. File shall be consigned to record room after its due completion.*

**Announced**  
30.10.2012

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

*Certified that this order consists of five pages. Each page has been dictated, read, corrected and signed by me.*

**(Judge Consumer Court)**  
Rawalpindi