

**IN THE COURT OF MALIK KHIZAR HAYAT KHAN PRESIDING
OFFICER/DISTRICT & SESSIONS JUDGE DISTRICT CONSUMER COURT
SARGODHA.**

Case No. 89/2018
Date of institution: 27.06.2018
Date of Decision : 09.07.2019

Muhammad Khurram Sohail Ashraf S/o Muhammad Ashraf,
Resident of House No.264, Eden Garden, New Satellite Town, Sargodha.
(claimant)

Versus

Muhammad Nasar Manager,
Cheema Brothers Flying Coach AC Service Gujrat,
General Bus Stand Sargodha.
(Defendant)

Muhammad Ali Khan Advocate for the claimant.
Mahr Gulzar Ahmad Advocate vice Amir Munir Malik Advcoate
for the defendant.

J U D G M E N T
09.07.2019

This is a claim/complaint by Muhammad Khurram Sohail Ashraf petitioner a business training organizer, against the defendant transporter with the assertion that on 28.04.2018 he booked two coasters/coaches of the defendant @ Rs.19000/- per vehicle for a journey from Coca Cola Chowk, Block No.14, Sargodha as point of departure to Emporium Mall, Lahore as destination, for the participation of it's 48 young business trainees in a training programe to be held on 29.04.2018 from 09:00 AM to 05:00 PM. The claimant paid Rs.2000/- as an advance money to the defendant while the balance was paid later on. It was settled at the time of booking that the said vehicles shall arrive at the said point of departure at 6:00 AM sharply on 29.04.2018. On the said date and time, petitioner and other passengers were present on the given

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address of departure but the coaches not arrived in time as the same reached there at 8:00 AM. He also stated that due to that delay of two hours, the petitioner and his fellow passengers reached at the destination with delay of two hours, that is why, they missed the registration for the session of said training, therefore, they missed the training and suffered an irreparable loss, i.e. actual financial loss of Rs.5 lacs as a fees for participation in the training , Rs.38000/- fare paid for the transport, alongwith damages for mental agony @ Rs. 1000000/- (one million). Feeling aggrieved, he verbally made a complaint to the defendant and also issued his first legal notice (Mark-A) on 10.05.2018 and then a second legal notice (Mark-B) on 02.06.2018, to the defendant.

2. Since the notices Mark-A & Mark-B were not properly responded by the defendant, therefore, the claimant brought his claim through institution of instant petition on 27.06.2018 for the recovery of his total claim @ Rs.1519000/-.

3. Defendant was summoned, who appeared and filed his written statement denying the claim of the petitioner by refuting the allegation of faulty service against him, with various legal objections and prayed for dismissal of the same.

4. In order to prove his case, claimant appeared as Pw-1, examined his real brother Muhammad Ans Sohail Ashraf as Pw-2 and Mudassar Nazir as Pw-3. In documentary evidence, he produced affidavits of all the three Pws as Exh.P-1, P-2 and P-3, attested copy of a Welcome Letter (Invitation) as Exh.P-4, attested copy of Featured Products LEO company Exh.P-5, attested copy of E-mail/intimation about withholding of allowances as Exh.P-6, attested copy of certificate of completion of seminar Exh.P-7, attested copy of certificate of participation to the petitioner (August 2015) as

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Exh.P-8, attested copy of training certificate to the petitioner (25.03.2012) as Exh.P-9, copies of legal notice drafted on 07.05.2018 and dispatched on 10.05.2018 as Mark-PA and second legal notice dated 02.06.2018 as Mark-PB, alongwith corresponding dispatch receipts as Mark-PA/1(TCS), and Mark-PB/1 (Pakistan Post), copy of booking receipt of coaches Mark-PC issued by the defendant and copies of 10 tickets for the participation in the said training as Mark-PD/1 to Mark-PD/10 and then closed his evidence.

5. On the other hand, Muhammad Nasar defendant appeared as Dw-1, produced his affidavit as Exh.D-1 and closed his evidence.

6. Arguments heard and record perused.

7. Learned counsel for the claimant has argued that the transaction of booking of the coaches, is admitted on the record but the defendant has only denied the alleged fault in the service provided by him i.e. the delay caused in the arrival of the coaches at the point of departure, but the same has been proved by the claimant through his reliable and unimpeachable evidence, therefore, he is entitled for the recovery of damages sought for. When questioned about the delay in filing his claim, he stated that the same has been explained in his application for condonation of delay that the delay in question was caused due to the conduct of the defendant who failed to submit his apology and to accept the claim of the petitioner/ applicant, well within time.

8. On the other hand, learned counsel for the defendant has argued that the claim of the petitioner is not maintainable being time barred as his application for condonation of delay is unable to disclose a sufficient cause. He further argued that though the


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original transaction of hiring transport service is admitted but the delay in reaching at the destination, is not on the part of the defendant rather it is exclusively on the part of the claimant and his fellow passengers who not only failed to arrive at the point of departure at the proper time but they also halted the vehicles at midway for taking their breakfast, therefore, the claimant is not entitled for any relief.

9. I have considered the contention of both the sides in the light of record and law on the subject.

10. Though the transaction of hiring transport service by the petitioner from the defendant, is admitted but the alleged liability of fault on the part of the defendant and the drivers of his coaches, has not been proved. It is an admitted fact that the balance of the fare payable by the petitioner, was paid by him at the end of the journey, without any protest, which means that at that particular moment, there was no grievance in his mind. This relevant fact amounts to an estoppel since alleged by the defendant in preliminary objection No.5 of his written statement.

11. It is pertinent to mention here that the alleged grievance i.e. the cause of action statedly, arose on 29.04.2018 while first legal notice under Section 28 (1) of the Punjab Consumer Protection Act, 2005, was issued by the petitioner on 10.05.2018, by giving 15 days time to the defendant for the redressal of his grievance, since the notice was not responded by the defendant, therefore, the claimant was obliged to file his claim till 29.05.2018 but he failed to do so and issued a second unwarranted legal notice on 02.06.2018 and after an unexplained delay of further 29 days, he instituted this case on 27.06.2018 by seeking condonation of delay through a bald


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application which is miserably failed to show any sufficient cause, justifying the same.

12. As a conclusion of the above discussion, it is observed that the petitioner has failed to prove his case on merits, therefore, his claim is hereby dismissed. No order as to costs.

13. The copies of this judgment be communicated/handed over to the parties, free of costs, as required under Rule 17 of the Punjab Consumer Protection Rules, 2009.

14. File of the case be consigned to record room after its due compilation.



**Presiding Officer,
District Consumer Court,
Sargodha.**

**Announced
09.07.2019**

Certified that this Judgment is consists of 05 pages, which have been dictated, corrected and signed by me.



**Presiding Officer,
District Consumer Court,
Sargodha.**