

IN THE COURT OF *MIRZA JAWAD A: BAIG*,  
DISTRICT & SESSIONS JUDGE,  
PRESIDING OFFICER, DISTRICT CONSUMER COURT,  
DERA GHAZI KHAN.

(PHONE: PTCL: 0642474100) (FAX: 0642470496).

Shah Nawaz Versus Proprietor Mohammad Haneef Choice Bakers

Old Complaint / Case No:	1528 / 231 / 11.
Date of Institution:	07-06-2011.
1 <sup>st</sup> Date of Decision:	16-11-2011.
New Complaint/ Case No:	1908 / 611 / 11.
Date of Restoration:	16-11-2011.
Date of Decision:	31-01-2012.

COMPLAINT ABOUT DEFECTIVE PRODUCT

ORDER:

Claimant is represented by Syed Farrukh Bukhari Advocate while the defendant is being proceeded against ex-parte.

1. The case is at the stage of ex-parte arguments which have been heard and file has been perused as such I proceed to dispose off the complaint by discussion in the following paragraphs.

2. Briefly stated the version of the claimant is to the effect that on 01-05-2011 he bought a tin drink pack from the shop of the respondent and paid Rs.70/-; that the respondent company refused to give any receipt; that after being insulted the complainant came out the shop and drunk the tin; that after drinking the said tin pack the complainant immediately started feeling giddy and left all his work and rushed to his house; that it was found to be alcoholic drink; that the complainant is Muslim by religion and lives in an Islamic State where sale and drink of alcoholic and alcoholic drink is not permitted; that the complainant can never even think about drinking. It is prayed by the claimant to direct the respondent to pay Rs.2,00,000/- on account of damages and Rs.50,000/- for not issuing of the receipt and Rs.15,000/- as litigation charges and Rs.30,000/- as counsel fee.

3. Ex-parte evidence of the claimant consists of affidavit of the claimant as Exp.1; original postal receipt as Exp.2; original acknowledgment due card as Exp.3; copy of license of counsel as Mark P.A; copy of CNIC of the claimant as Mark P.B; copy of legal notice as Mark P.C. The right of the claimant to produce additional evidence has been reserved to be produced if the case is to be contested by the defendant. Additional ex-parte evidence of the claimant consists of original tin pack as Exp.4.

4. The case was initially contested by the defendant by filing his written statement and Wakalatnama of Malik Mohammad Sheraz Arshad Advocate by raising certain preliminary objections and denied the purchase of the disputed drink by the claimant and also denied about non issuance receipt and requested for dismissal of the complaint with special costs and also requested for recovery of Rs.20,000/- as counsel fee and fine from the claimant.

5. It is pertinent to note that although evidence is necessary to be recorded under S.30 of PCP Act 2005 for disposal of the complaints by the Consumer Courts but since the procedural laws known as the Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1898; the Qanun-e-Shahadat Order, 1984, the Bankers' Books Evidence Act, 1891 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the evidence should be recorded by affidavits instead of oral evidence.

6. As far as the request for action against the defendant is concerned, it is observed that it is settled law that the manufacturer or service provider is not liable for any damages except a return of the consideration or a part thereof and the costs, specifically where the consumer has not suffered any damages from the product or provision of service except lack of utility/ benefit.

7. It is pertinent to note that the grant of damages is curtailed even under Contract Act, 1872 in which it is provided in S.73 to 75 that the damages should be proportionate to the loss and not excessive by mentioning that such compensation for loss or damage caused by breach of contract is not to be given for any remote and indirect loss or damage sustained by reason of the breach. It is an embargo placed by the general law of contracts upon the powers of the courts about grant of damages.

8. It is also observed that further embargo on the quantum of damages to be awarded by the consumers courts has been placed by the law provided in S. 4, 10, 13 & 15 of PCP Act by declaring that the manufacturer or service provider shall be liable to a consumer for damages proximately caused by anticipated use of the product or provision of services that have caused damage but he shall not be liable for any damages except a return of the consideration or a part thereof and the costs in such cases where the consumer has not suffered any damages from the provision of service except lack of benefit or loss of utility as such I find that the claimant is not entitled to recover the damages or compensation or counsel fee or litigation charges through this court under the law of consumers.

9. By keeping in view the foregoing paragraphs relating to the restriction against the grant of damages, it is observed that since it is clearly printed on the label of the pack that it contains beer and alcohol and since the claimant is not claiming himself to be illiterate as such the claimant is equally responsible for purchasing and drinking the liquid contained in said tin. He is therefore not entitled to recover damages or compensation or litigation charges from the defendant.

10. As far as the mode of proof of the counsel fee is concerned, it is observed that the recovery of the lawyer's fee is legalized by S.31(g) of PCP Act 2005 and the same is not necessary to be proved and no evidence is required from the counsel about the receiving of the same when the same is specifically pleaded in the complaint itself as Rs.30,000/- while the appearance of the learned counsel to conduct the case is the acknowledgement of the receipt of the said amount as legal fee, therefore the claimant is entitled to recover the counsel fee from the defendant.

11. As far as allegation of non issuance of receipt is concerned, I find that the claimant should have refused to purchase anything from such shopkeeper who refused to issue the receipt and the matter should have been reported to the Authority deputed under the law for taking action about non

issuance of receipt u/s 19 of PCP Act 2005 but since the claimant has participated in the illegality by consuming the disputed pack without receipt as such I find that the claimant is not entitled to recover the damages or fine on this account.

12. However he is found to be entitled to recover the sale price of the pack alongwith Rs.30,000/- as counsel fee while the complaint is liable to be dismissed to the extent of remaining claim in the interest of justice.

13. It is clarified that the application for cancellation of this order, if filed on behalf of the defendant for taking the benefit of ex-parte nature of the order, then the whole claim would be deemed to have been restored including the part of claim which is not being granted presently, while the possibility for the grant of the remaining relief would be considered on its own merits during the fresh proceedings in fresh round of litigation, in accordance with law.

14. In accordance with above discussion, the complaint is partly accepted to the extent of the recovery of Rs.70/- as sale price of disputed pack & Rs.30,000/- as counsel fee total amounting to Rs.30,070/- while the complaint is dismissed to the extent of damages and compensation and litigation charges.

15. *The right of the defendant is however reserved with reference to Rule 14 of PCP Rules 2009 to move the application for cancellation/ modification to be filed within one month failing which the right for seeking cancellation/ modification would be deemed to have been forfeited in accordance with law.*

16. *The claimant is entitled to get this order implemented by filing the application for implementation with reference to S.31, 32 & 36 of PCP Act 2005, if so required with the warning to the defendant that the costs to be incurred for and during the application for implementation would also be liable to be recovered from the defendant.*

17. *The file of this complaint is to be consigned to the record room duly page marked with proper index and after due completion and made available for issuance of attested copies and kept under safe custody till the period fixed for destruction in accordance with the Rules & Orders of Honourable Lahore High Court.*

Announced:  
31-01-2012.

(MIRZA JAWAD A: BAIG)  
D. & S. J. / P.O., D.C.C., D.G.K.,  
PUNJAB, PAKISTAN.