

IN THE COURT OF *MIRZA JAWAD A: BAIG*, DISTRICT & SESSIONS JUDGE,  
PRESIDING OFFICER, DISTRICT CONSUMER COURT,  
DISTRICTS: D.G. KHAN; LAYYAH; MUZAFFARGARH; RAJANPUR,  
50/Z, MODEL TOWN, DIVISIONAL HEAD QUARTER, DERA GHAZI KHAN.

(PHONE: PTCL No. 0642474100) (VNTC No. 0649239094) (FAX No. 0642470496).

( Riaz Hussain versus Mohammad Amjad

COMPLAINT ABOUT DEFECTIVE PRODUCT

Complaint / Case No: 1867 / 570 / 11.  
Date of Institution: 01-11-2011.  
Date of Decision: 03-01-2012.

ORDER:

Parties are being represented by their personal appearance.

1. The case is at the stage of the arguments which are being heard and special oath has been taken by the claimant on Holy Quran on the offer of the defendant to replace the disputed mobile set and having become satisfied by the oath taking of the claimant, the defendant has agreed to provide new mobile set on demand of the claimant therefore I find that the main grievance of the claimant is fulfilled accordingly.

2. Since the claimant has demanded the recovery of Rs.10,000/- as damages and litigation charges with request for imposing the fine against the defendant for violation of Consumer Protection Act as such the said request of the claimant is discussed in the following paragraphs.

3. The version of the claimant is to the effect that he purchased disputed mobile telephone set in accordance with the specification mentioned in the complaint packed with box on 28-09-2011 and also obtained the receipt but the same stopped working after use of one hour only and he had to pay Rs.400/- for the replacement as illegal charges while the set was replaced even after several rounds taken by the claimant to the shop of the defendant despite issuance of legal notice. The claimant has requested for the recovery of Rs.2400/- as price of the mobile along with Rs.10,000/- as damages and litigation charges with the further request for imposing the fine against the defendant for violation of Consumer Protection Act along with any other admissible relief.

4. The defendant has contested the complaint in his written statement to the effect that the set was actually purchased on 18-09-2011 while the receipt was issued on 28-09-2011; that the claimant was informed that there was no guaranty of China Mobile at the time of purchase; that charges for repair were asked to be paid; that the claimant had given threat that the payment would be received by calling him in the police station; that the defendant is business man and does not perform business by fraud and falseness; that the complain is not based on reality which should be dismissed by expectation of justice from this court.

5. As far as the demand for the recovery of the damages,

compensation, litigation charges, costs is concerned, 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.

6. 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.

7. Since there is no explanation in the present complaint about any other damage except the loss of utility or lack of benefit 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.

8. In accordance with above discussion, the complaint is partly accepted with consent of the defendant on the basis of special oath taken by the claimant to the extent of replacement of the disputed mobile telephone set while the complaint is dismissed to the extent of remaining relief and to the extent of recovery of the damages and litigation charges.

9. *Parties are left to bear their own costs.*

10. *A copy of this order is to be provided to the defendant free of costs on demand in addition to the issuance of the copy to the claimant.*

11. *copy of this order is directed to be made available for publishing on the internet to the website of Punjab Consumer Protection Council Secretariat, 135-J, Model Town, Lahore for public disclosure and easy access of information to the consumers relating to the products and services in accordance with Rule 25 of PCP Rules, 2009.*

12. *The file of this complaint is to be consigned to the record room of this court 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.*

