

In the Court of Mahmood Ahmed Shakir Jajja, Presiding Officer/ District & Sessions Judge, District Consumer Court, Bahawalpur

Muhammad Akhtar Qureshi Vs Pak Suzuki Company etc.

Case No. 1503/09
Dated of Institution: 16-11-2009.
Date of Decision: 17-11-2011.

Present: Parties along with their counsel.
Arguments heard. Record perused.

Order:-

The version of the complainant is that he had booked his Suzuki Cultus VXLI CNG Graphite Grey car from the respondent M/S Pak Suzuki Motor Company Limited; that the said company is a multinational automobile company part of the Suzuki Motor Corporation, Japan through its 35 authorized dealer at Bahawalpur; that M/S Faisal Enterprises, Bahawalpur on advance payment of Rs. 86,200 as sale price in full through pay order No. 1444831 dated 28-08-2009 favouring M/S Pak Suzuki Motor Company Ltd, drawn on any branch of Faisal Bank at Karachi without issuing formal invoice in the name of the complainant on 28-08-2009 with a promise to deliver the Booked Car within 18 days; that later on, on 12-09-2009, the complainant came to know only that respondent PSMCL has issued Booking receipt No. 1026470 dated 28-08-2009; that the complainant's booked Car Suzuki Cultus VXLI CNG Graphite Grey, Chassis: SF410PK 439242, Engine No. PKP 405036 along with delivery letter was handed over to him on 20-09-2009 Sunday at 7:35 PM without any pre-delivery inspection and without any gasoline in the fuel tank of petrol as well as CNG cylinder; that the Car was got serviced and some scratches and uncoloured points were unearthed on the body of aforesaid car and loose / improper fittings of doors, rear seating, Air Conditioning etc, which were brought into the knowledge of the aforesaid dealer immediately; that as per advice of the dealer, the car was put on driving on CNG after completing 1000 km run on petrol; that no sooner CNG was got filled 1st time, entire CNG leaked out within an hour giving only

40 km mileage in this company fitted CNG Cylinder / installation Kit; that the situation was hazardous rather highly dangerous for life and property since CNG is an imminent inflammatory gasoline, besides injurious to the public health, so, after wastage of the 1st filling in the CNG Cylinder, the car was presented to the dealer who examined it and found same manufacturing defects and confirmed leakage from the system due to improper CNG fittings and delivery without proper checking and driving tests both on petrol and CNG fuel which was also evident from the empty petrol tank and CNG Cylinder at the time of delivery to the complainant in the evening of 20-09-2009; that later, the dealer tried to remove the defect but his 3s dealership concern was found unequipped to remove the faulty item on spot; that then he closed the CNG Cylinder connection valve with a promise to replace the faulty pressure meter within a week time; that on the specified date, the complainant returned to the dealership to have the problem corrected but the service representatives did not assure him that the problem would not occur again; that besides, it is advised by the dealer to keep at least 10-15 liters of petrol in fuel tank of CNG vehicles to save the fuel pump from damage, as it remains in operation even in CNG mode; that it means CNG fittings / design is defective one and is not safe in case of smoking or blowing up of any flame inside / outside the car as well as negates the very purpose of economical use of CNG vehicles in the country as these are less damaging to the environment besides being affordable for the middle class; whereas, the complainant had the impression, given to him on the purchase of the car, that it would return not less than 135 km with use of Air Condition per CNG Cylinder within city and above 200 km on long route, which is practically proved untrue; that besides, consumption of petrol is also not experiencing reasonable; petrol's continuous operation even in CNG Mode proves that CNG kit / installation / designing is not in accordance with the prescribed standards and only works if CNG-Petrol continuously mixing is going on, hence, the trouble being faced by the complainant is nothing else but certainly the worst example of the Unfair Trade Practices; that the complainant who has got his booked car through the local dealer in Bahawalpur almost one month ago and still has not been able to experience the smooth functioning of the vehicle due to any manufacturing faults in it

from the outset; that major manufacturing faults are experienced as non functioning of Air Conditioning System as upto the mark, faulty hand brake, loose doors, standard fittings of Head Lights and its lighting conditions recommended during Highways driving, substandard rubbers, dried-up bushes, ill-fitted window glasses, loose gripped tyres dangerous to drive the vehicle on Motorways; that in addition to this, the vehicle has not even got simple cheap things like mud flaps, seat / vehicle covers, remote control central key locking of doors, and other small things; so, the automobile mechanics / Pak Suzuki Dealer themselves advice that one has to replace many parts of a new vehicle in order to get some sort of relief especially in CNG installation and Air Conditioning System, inherent problems; that no doubt M/s Pak Suzuki Motor Company Limited is a multinational automobile company, part of the Suzuki Motor Corporation, Japan, has been spewing out vehicles in Pakistan for more than 25 years but failed to provide reliable, durable, defect-free motoring to the consumer and the complainant is one of the victims of its low quality production and highly un-user friendly approach of this plant; that the end-product a customer gets from this plant after a painfully lengthy period is simple a heap of bland garbage; that the purchase of a new motor car is a major, high cost consumer transaction and the inability to correct defects in these vehicles creates a major hardship and an unacceptable economic burden on the consumer; that besides, defects in the new car lower down its market value in a decrease upto 20% of its original sale price also substantially impaired the use of the car by the complainant right from the day one till today; that the new car visited the workshop of respondent's local dealer a number of times but defects persisted due to dangerous defect in the design or manufacture of the automobile e.g. the CNG system which is highly defective both in its design / manufacture and in its warnings / instructions; whereas, the complainant was under the illusion that he was buying a Suzuki Car which is manufactured as per the standards of the Japanese Suzuki Car / international quality at competitive price and that it would be defect free but he was on mistaken; that one another occurrence of the deception in course of Booking of aforesaid Suzuki Cultus VVLI CNG Graphite Grey through respondent's 3s authorized dealer at Bahawalpur / " M/s Faisal Enterprises, Bahawalpur"

is that the dealer collected advance payment of Rs. 862000/- as sale price in full through pay order No. 1444831 dated 28-08-2009 favouring “ M/s Pak Suzuki Motor Co. Ltd”; drawn on any branch of Faisal Bank Ltd; at Karachi and processed the booking in its own name without any express authority of the complainant, which is nothing else but an immoral, unethical, oppressive and unscrupulous act that resulted monetary loss to the tune of Pak Rs. 22545/- to the complainant who was forced to bear the entire registration expenses, government dues and taxes including withholding income Tax payable by its 1st; that purchaser and refundable to the said purchaser / income tax payer on claim under law, Vehicle Transfer Fee for car / LED-09-3737 on dealer’s behalf, for his deceptive act as an authorized representative of respondent company; that no doubt M/s Pak Suzuki Motor Co. Ltd; is responsible for the acts and deeds of its representatives / dealers under the law, so, the respondent PSMCL to compensate the complainant for Booking / Registration, Commission and other incidental losses to the tune of Rs. 24400/- in its entirety immediately for misrepresentation and unfair trade practice indulged by respondent’s local dealer M/s Faisal Enterprises, Bahawalpur and getting issued wrong booking as well invoice No. VI.09031401 dated 17-09-2009 for the aforesaid vehicle in the name of the aforesaid local dealer sneakishly, although the particulars were communicated to respondent PSMCL end through Emails customercentre @ paksuzuki.com.pk on 28-08-2009, 03-09-2009 and 14-09-2009; that as per respondent PSMCL Warranty each new Suzuki vehicle distributed in Pakistan by PSMCL and sold by an authorized PSMCL dealer will be free, under normal use and service, from any defect in material and Workmanship; whereas, the complainant has suffered because both of the defective car supplied to him and also because of misrepresentation; so, immediate request / Notice u/s 28 (1) of PCPA 2005 was issued and served upon the respondent on 20-10-2009 through Email, DCS for compensating the complainant for the loss sustained, by payment of Rs.100,000/- for this undesirable act of respondent’s dealer at Bahawalpur, compensation of Rs. 100,000/- for mental agony or in the alternative, for replacement of the vehicle, or the refund of the total purchase price of Rs. 862000/- plus freight charges Rs.8000/- and registration charges of Rs.24500/- with interest at 18%

p.a.and damages from 28-08-2009 till realization of the amount for unfair, deceptive acts and practices, including suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of material fact in the course of commerce but no reply to the said notice was ever received; that the complainant suffered financial loss not only because of the callous and careless attitude of the respondent but also on account of the respondent having sold defective car to the complainant, defects whereof could not be removed thereby leaving him to face emotional stress, mental agony and to drive the defective car posing a risk to the complainant life; that such act and omission on the part of the respondent amounts to deficiency in service, restrictive trade practice and unfair trade practice within the purview of the PCPA 2005; that the complainant has suffered a lot of mental agonies, financial loss and harassment at the hands of the respondents for which the complainant deserves to be compensated amply and suitably in terms of money in the interest of justice; that the respondent is liable to be settled with costs and damages; that the complainant is entitled to maintain and file the present complaint before this court on the following grounds amongst others, each one of which is without prejudice to others, and seeks the indulgence of this court to issue directions or orders to the opposite parties deemed appropriate;

- (a) That such an act and omission on the part of the opposite parties amounts to deficiency in service, restrictive trade practice and unfair trade practice under the purview of the Consumers Protection Act.
- (b) That the complainant has suffered lot of avoidable mental agonies, physical harassment and financial loss, irreparable loss and injury at the hands of the opposite parties for which the complainant deserves to be amply and suitably compensated in terms of money as well as replacement with a latest and brand new defect-free Suzuki Cultus VXLI CNG Graphite Grey Car with all over head expenses already incurred / to be incurred in this connection, in the interest of justice.

- (c) That the opposite parties deserve to be saddled with heavy and extra – ordinary costs so that the opposite parties can be deterred from adopting such malpractice in future.
- (d) That the complainant herein deserves to be amply compensated in terms of money for the inconvenience, traveling expenses, for mental agonies, damages, delayed service/no service, interest, and loss suffered due to negligence and dereliction of duties by the opposite parties.
- (e) That opposite parties are estopped due to their own act, deed and conduct from denying the rightful claim of the complainant.

That the complaint is within the period of limitation; that u/s 27 (c) of the PCPA 2005, the cause of action wholly / in part arises at Bahawalpur since Booking and delivery of the car in issue was made at Bahawalpur by the respondent PSMCL through its dealer M/s Faisal Enterprises, Bahawalpur; that this court has jurisdiction to try the present complaint as the subject matter of the complaint is a consumer dispute; that it is prayed;

- (a) Direct the respondent PSMCL herein to take back the Suzuki Cultus VXLI CNG Graphite Grey Car / LED-09-3737 back and repay an amount of Rs.9,25,000/- being the cost of the car, Freight Charges, registration charges and additional accessories, paid by the complainant, along with interest at the rate of 18% with effect from 28-08-2009, as the car was defective till final realization of the decretal / claimed amount.
- (b) Direct the respondent PSMCL to pay compensation for the loss at his place of work, coaching charges and undesirable act of respondent's dealer at Bahawalpur by payment of Rs. 100,000/- and Rs. 1,00,000/- towards mental agony, physical deterioration and emotional stress.
- (c) Direct the respondents to pay the costs of litigation and legal consultation amounting to Rs. 30,000/- in addition to the above amount.
- (d) Saddle the opposite parties with special and extra-ordinary costs as deems fit so as to deter them from adopting such malpractice in future;

- (e) Pass such other orders in favour of the complainant as deemed fit and proper in the facts and circumstances of the case.

From the other side, it has been averred that the complaint is not maintainable in its present form; that the complaint is malafide and only has been moved to linger on the matter; that the respondent No.1 is dully represented through Mr. Imran Saleem; that all the promises for delivery of vehicle made by the dealers are always tentative in nature and the delivery time is ascertained from the booking orders are received from throughout the country; that the respondent No.2 delivered his own booked car to accommodate the petitioner and naturally, invoice was to be issued in his name and not that of the petitioner; that the car was delivered to the complainant in O.K condition and there was sufficient fuel to drive the same up to the petrol pump and there upon, he signed the delivery documents voluntarily; that the petitioner / customer was advised to drive the car on petrol for the first one thousand kilo meters and low mileage can occur due to driving conditions, driver's acceleration patterns, wind speeds, road surface and many more factors; that the defects of door noises, hand brakes or air conditioner's problems was not brought to the knowledge of the dealership staff; that the provisions of mud- flaps, seat covers and remote control of MP3 key less remote entry and security system are not provided by the company as per policy; that Pak Suzuki Motor is a multinational company and is providing economical vehicles and its consumption is at the highest level as compared to any other car manufacturing company, that the charges of registration and freight etc are always born by the customer and not by the company; that all the objections raised by the complainant are baseless, without any reasoning and against the normal practices of Auto Mobile Industry; that the respondents have offered that they are ready to replace any part of the car which is not working properly. It has been prayed that the petition is baseless, illegal and without any substantiate which be dismissed on merits.

After hearing the arguments and perusal of the record it has been observed that Mr. Imran Saleem, Assistant Sales Manager is only competent as per extract of Board Resolution dated 08-05-2010. The respondents have been given many opportunities after

the order passed by my Learned Predecessor dated 11-01-2011 for production of authorization and board resolution to make competent said Imran Saleem for appearing in the court on behalf of the respondents but they have again produced the same resolution dated 21-02-2011 which already has been held illegal vide order dated 11-01-2011. Therefore, the appearance of Mr. Imran Saleem as representative of the respondents is illegal and resultantly, the power of attorney submitted by the counsel on behalf of the respondents is also unauthorized and same is the case with submission of written reply by the respondents.

The complainant, to substantiate his case, has produced documents Exp-A1 to Exp-A21. The respondents have not denied the purchase of vehicle by the complainant from them. Therefore, there is no dispute on this point. The issue between the parties is regarding the manufacturing defects pointed out by the petitioner and denied by the respondents but some of these have been admitted by the respondents as they have pleaded in their written reply that the replacement of mono meter and side mirror was made by them. It means that there were some defects in the parts of the vehicle. That is why, the petitioner contacted the respondent No.2- dealer for redressal of his grievance but the respondents have failed to redress the same and resultantly, the petitioner has to come to the court. The respondents have also not responded to the legal notice issued by the petitioner. The petitioner has pointed out many defects in manufacturing, rusted doors, defecting faulty hand brake, loose doors, standard fittings of Head Lights and its lighting conditions recommended during Highways driving, substandard rubbers, dried-up bushes, ill-fitted window glasses, loose gripped tyres, fitting of CNG and non functioning of A.C up to the Mark? Had the respondents removed the defects and properly responded the request of the petitioner, he had no need to come to the court and pursue this case for a long period of almost 2 years, being a senior and busy advocate. So, I am, fully convinced in four corners of my mind and am satisfied at heart that the respondents have provided faulty services to the petitioner. Therefore, they are duty bound to remove the defects and if it is not possible, then to replace the vehicle. The petitioner is also held entitled to receive the damages from the respondents as he has

faced physical and mental torture and agony and loss of his precious time due to the faulty services of the respondents. He is therefore, held entitled to recover the damages of Rs. 1,00,000/- from the respondents also. The petition in hand is allowed accordingly in favour of the petitioner and against the respondents with costs. Notice be issued to the respondents for execution of the order for 02-01-2012.

Regarding the issue of proper and fully authorized representation of the respondents through_____ has been challenged by the petitioner. On his application and reply by the respondents, by Learned Predecessor decided the matter vide his declared order dated 11-01-2011 and it was held without resolution through Mr. Imran Saleem, Assistant Sales Manager.

Announced:
23-11-2011

Presiding Officer