

IN THE COURT OF MIRZA JAWAD A: BAIG,  
DISTRICT & SESSIONS JUDGE,  
PRESIDING OFFICER, DISTRICT CONSUMER COURT,  
50-Z, MODEL TOWN, DERA GHAZI KHAN.

(PHONE: PTCL: 0642474100. FAX: 0642470496. VNCTC: 0649239094).

Shah Nawaz Versus Proprietor Mohammad Haneef

Old Complaint/ Case No:	1528 / 231 / 11.
Date of Institution:	07-06-2011.
Date of 1 <sup>st</sup> Decision:	16-11-2011.
2 <sup>nd</sup> Old Complaint/ Case No:	1908 / 611 / 11.
Date of Restoration:	16-11-2011.
Date of 2 <sup>nd</sup> Decision:	31-01-2012.
New Complaint/ Case No:	2212 / 133 / 12.
Date of Restoration:	17-02-2012.
Date of Final Decision:	29-05-2012.

COMPLAINT ABOUT DEFECTIVE PRODUCT

ORDER:

The claimant is represented by Syed Farrukh Bukhari Advocate while the defendant is represented by Malik Mohammad Sheraz Arshad Advocate.

2. The case is at the stage of the decision. Arguments were heard on previous date. I have perused the file in the light of the arguments. Now I proceed to discuss and dispose off the present complaint in accordance with the findings in the following paragraphs.

3. Briefly stated the grievance of the claimant is to the effect that the complainant immediately started feeling giddy after drinking the liquid from the tin pack branded as '**Shandy Bass**' which was purchased from the store of the defendant for Rs.70/- on 01-05-11 and the same was found to be Alcoholic drink. It is alleged that sale and drink of Alcohol and Alcoholic drinks is not permitted in the Islamic State where he lives and that the complainant being a Muslim can never even think about drinking. It is also alleged that the respondent completely refused to give any receipt and insulted the complainant. He has demanded the payment of Rs.2,00,000/- on account of damages, Rs.50,000/- for not issuing the receipt, Rs.15,000/- as litigation charges and Rs.30,000/- on account of counsel fee.

4. The case was initially contested by the defendant by filing his written statement by raising certain preliminary objections and denial of the purchase of the disputed drink by the claimant and also denied about non issuance of the 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. The complaint was previously accepted partly by ex-parte order dated 31-01-2012 due to absence of the defendant but he was allowed to defend afterwards by accepting his application vide order dated 17-02-2012.

6. 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; special rules of evidence u/s 118 of the Negotiable Instruments Act, 1881 are not strictly applicable to the proceedings of the Consumer Courts, as such the propriety demands that the regular evidence should not be recorded in such cases where

the points for determination are mostly based on the copies of the admitted documents available in the file of the complaint or admitted or denied in the pleadings just like the present case.

7. I have observed that 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.

8. 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.

9. 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.

10. 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.

11. It is further observed that the disputed tin pack is available for perusal being deposited by the claimant in the court and 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 should have returned the same without consumption specifically when he was denied the issuance of the purchase receipt and when he was insulted. He is therefore not entitled to recover damages or compensation or litigation charges or counsel fee from the defendant for the consequences of the disputed consumption except return of the sale price.

12. It is also observed that there are two affidavits of the claimant included in the file without any affidavit of the defendant in rebuttal as such I find that the purchase of the disputed drink for Rs.70/- from the defendant and feeling giddy by drinking the same is established by two affidavits of the claimant therefore he is entitled to the recovery of the sale price of the same amounting to Rs.70/- while the complaint is liable to be dismissed to the extent of remaining claim in the interest of justice.

13. 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 while the complaint is dismissed to the extent of the request about recovery of damages and compensation and litigation charges and counsel fee.

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

15. *This order would become final u/s 34 of PCP Act 2005, if the appeal is not preferred within prescribed period under S.33 of PCP Act 2005 & Rule 18 of PCP Rules 2009 in accordance with the Rules of Procedure of Honourable High Court.*

16. *In case of delay in compliance, the claimant is entitled to get the 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 be liable to be recovered from him.*

17. *One attested copy each of this order is directed to be provided to the parties on filing the applications without court fee tickets even if on plain papers free of charges by entry with signatures or thumb impressions in token of receiving in Dak Register with the clarification that extra copies would be liable to be issued at their own expenses.*

18. *The empty tin pack deposited in the court is being handed over to the custody of the Secretary of this court for return to the claimant after expiry of the period of appeal through the messenger of this court.*

19. *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.*

Announced:  
29-05-2012.

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