

IN THE NAME OF ALLAH ALMIGHTY, THE MOST GRACIOUS AND THE MOST MERCIFUL.

**IN THE COURT OF CHOUDHARY MUHAMMAD YOUSAF AUJLA,
PRESIDING OFFICER/ADDITIONAL DISTRICT & SESSION JUDGE,
DISTRICT CONSUMER COURT, FAISALABAD.**

Claim No:	64/DCC-2008.
Date of Institution of Claim	07. 01.2008.
Date of decision	19.03.2008.

Doctor Muhammad Abdullah Vs. Malik Zafar Iqbal.

CLAIM FOR RECOVERY OF DAMAGES Rs. 5,00,000/- U/S. 25 OF
PUNJAB CONSUMER PROTECTION ACT,2005.

ORDER:-

1. The claim was made by the claimant Doctor Muhammad Abdullah that he purchased a tube well along with a turbine made of Master (PVC) Company for installation in his landed property from the defendant, which was agreed to be installed for Rs.81,500/- and an amount of Rs.49,600/- was paid in advance to the defendant on 07.06.2005 and later on in different installments of Rs.8,000/- + 2,000/- + 7,000/- total Rs.66,600/- and an amount of Rs.14,900/- was out standing and guarantee period of the tube well turbine of 05 years was given but after a period of just 01 year the turbine went out of order, at which the defendant got removed the same from the premises of the claimant at his request for repair work got and promised to re-install the same after getting it in order from the Lahore but despite the laps of period of one and half year the same has neither been replaced nor the received amount has been re-paid. Due to this act of the defendant the claimant has suffered a loss of Rs.5,00,000/- to his Rabhi and Kharif crops of year 2006-07 like Wheat, Peddy, Sugarcane and Fodder etc.

2. The claim was hotly contested by the defendant by filing a written reply that claim was not maintainable in its present form and the claimant was not the consumer of the defendant being not an aggrieved person as turbine was purchased by Mr. Aslam Hayyat Maghyana and not by the claimant and an amount of Rs.16,900/- was to be paid by the said Mr. Aslam Hayyat Maghyana and after about one year the turbine was taken down while in running position at the request of Mr. Aslam Hayyat Maghyana and the labour charges Rs. 7,00/- were also to be paid of Mr. Aslam Hayyat Maghyana and total out standing amount of Rs.17,600/- was adjusted as the turbine was sold by Mr. Aslam Hayyat Maghyana and no transaction ever took place of the claimant with the defendant.

3. The parties were offered an opportunity to enter into a Pre-trial settlement, which failed and ultimately both the parties produced their respective evidence.

4. The claimant examined his father Mr. Khan Muhammad as Pw1, the claimant himself appeared as Pw2 with his affidavit Expw2/1. and produced the receipts of the tube well as Mark-A, B and c and Muhammad Aslam Hayyat Maghyana as PW3 with his affidavit as Expw3/1.

5. In rebuttal, the defendant himself appeared as a witness as Dw1 with his affidavit as Ex-DW1/1 and a receipt Ex-DW-1/2 and examined two others as Dw's namely Muhammad Baksh as Dw2 and Muhammad Saleem as Dw3 with their respective affidavits as Ex-DW2/1 and Ex-DW3/1.

6. I have heard the learned counsel for the parties at length and have gone through the record very minutely. The case of the claimant is that he purchased a turbine tube well from the defendant worth Rs. 81,500/- and an advance of Rs.49,600/- was paid by him and the remaining amount except Rs. 14,900/- was paid into installments to the defendant and the turbine worked properly only for one year. Thereafter on the complaint of the claimant regarding disorder of the turbine, it was got removed by the defendant but the same was neither got in order nor its price was paid by the defendant despite the fact that there was a five years guarantee period mentioned by the defendant in the receipt Mark-B admitted by the defendant.

7. The defendant took the version that the tube well turbine was not purchased by the claimant but it was one Mr. Muhammad Aslam Hayyat Maghyana a lessee of the claimant who purchased the same and after one year, at the expiry of its lease period, he got removed the tube well turbine and sold to the defendant in consideration of Rs.25,000/-. This version of the defendant stand rebutted from the evidence on file as admittedly the claimant is the owner of landed property at which tube well turbine was installed and the said Aslam hayyat Maghyana has controverted the defence plea of the defendant by appearing as Pw2. It was also alleged by the defendant that the tube well turbine was sold by the said Mr. Muhammad Aslam Hayyat Maghyana while working smoothly in lieu of Rs.25,000/- but this version of the defendant also stands denied by the Pw2.

Moreover the defendant did not mention the price of Rs.25,000/- allegedly paid by him to said Mr. Muhammad Aslam Hayyat Maghyana in his written statement filed in the court and all the receipts Marks- A, B and C do not bear the name of Mr. Muhammad Aslam Hayyat Maghyana as purchaser, whereas the removal of said turbine by him stand admitted in his written statement as well as in evidence, but there is no proof of any such payment to Mr. Muhammad Aslam Hayyat Maghyana by the defendant as the making of payment alleged by the defendant, was not even mentioned by him in the written reply and the affidavits of all the three DW's.

8. In view of the above situation it stand proved that the claimant was a consumer of the tube well turbine purchased from the defendant which met with technical defects after a period about one year and it was taken out from the premises of the claimant by the defendant and its payment to the claimant by the defendant is not proved and accordingly the defendant is liable to return the price of tube well turbine to the claimant as per prevailing market rate or to provide the fresh tube well turbine to the claimant within a period of one month as the guarantee period of 05 years was admittedly there.

9. The claimant has failed to prove the entitlement of damages / compensation for damage to his crops as no evidence in detail could be brought by him on the file, regarding this damage due to non availability of irrigation water.

Announced
19.03.2008

Ch. Muhammad Yousaf Aujla,
Presiding Officer/
Additional District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of 03 (Three) pages, dictated, signed and corrected by me.

Ch. Muhammad Yousaf Aujla,
Presiding Officer.
Additional District & Session Judge,
District Consumer Court, Faisalabad.