

**In The Court Of Syed Maruf Ahmedali Presiding Officer
District & Sessions Judge District Consumer Court
Lahore.**

Dr. Amjad Ali V/S Manager TCS.

Order.

The Complainant Dr. Amjad Ali has filed a claim for recovery of damages amounting to Rs. 10 Million under the Punjab Consumer Protection Act 2005 against the Respondent Company.

2 Brief facts, according to the Complaint are that the Complainant booked a packet on 30.04.2008 vide receipt No.500212265 addressed to Australian Medical Council P.O Box 4810 Kingston Australia against a consideration of Rs. 1107/- the said packet contained Admission Forms to be delivered before 06.05.2008 being the last date of receiving of Application. As the Complainant had to appear in an examination scheduled to be held on 01.07.2008 in Dubai. It is further stated that earlier the same nature of shipment was booked through the Respondent Company on the same address which was delivered at the same address vide receipt No.500189984 dated 12.03.2008 .On inquiry from Australian Medical Council it transpired that no Admission Forms were received by them. When the Complainant inquired from the Respondent they returned the consignment undelivered as the address was incomplete. There after the service of FedEx was engaged by the Complainant and documents were sent to the Australian Medical Council on the same address which was delivered to them vide receipt dated 09.05.2008 .It is alleged that the Complainant had suffered a heavy loss due to the negligence of the Respondent and the Complainant was deferred for one year and the examination which was to be held in Dubai, now the Complainant is compelled to appear in Australia, which is more expensive. Legal Notice dated 16.05.2008 was served upon the

Respondent and the Respondent refused to accede to the request of the Complainant. Hence this Claim.

3 The Respondents was summoned who contested the claim of the Complainant through their written statement. The Complainant in order to prove his case appeared in the Witness Box as PW-1 and tendered in evidence documents Ex-P/1 to Ex-P/5 and Ex-C/1 to Ex-C/2 and Legal Notice Mark A. On the other hand RW-1 Jamsheed Akhtar (Area Operational Manager)TCS appeared on behalf of the Respondent and tendered in evidence copy of the Web Site Mark R/1 and Mark R/2.

4 It is contended by counsel for the Complainant that the shipment booked by the Complainant on 30.04.2008 was never delivered to the addressee at Australia and was returned back with the objection that the address is incomplete. On 12.03.2008 the Complainant had booked a shipment at the same address for Australia which was delivered to the addressee. There after the Complainant booked the shipment through FedEx on 09.05.2008 on the same address. The shipment could not reach the addressee in time therefore the Complainant could not appear in the examination to be held on 01.07.2008 in Dubai and was deferred for one year and now he had to appear in Australia, the expenses of which are very high. The Petitioner had suffered damages amounting to Rs. 10 Million, as he had lagged behind his other colleagues and he had remained mentally disturb and he had to resign from his Job to appear in the examination. He has further contended that the Complainant has proved his case through verbal , as well as documentary evidence. Due to the faulty and defective service of the Respondent, he had suffered a huge loss. He has prayed that his Claim be accepted.

5 On the other hand the counsel for the Respondent has contended that the Respondent is a Private Limited Company and had not been sued properly. The Claim of the

Complainant is not maintainable in this Court, as the Court lacks jurisdiction. He has further contended that the Complainant has no cause of action. He has further contended that the address given by the Complainant on the shipment was incomplete, therefore the same could not be delivered due to the fault of the Complainant. He has further contended that the consignment dated 12.03.2008 was delivered to the addressee which is mentioned in the Legal Notice by the Complainant. He has further contended that the Complainant has failed to prove his case and the same be dismissed.

6 After hearing the arguments of both the learned counsel for the parties and perusing the record. The Complainant in order to prove his case has appeared in the witness box as PW-1 and had almost reiterated the contents of his Complaint in his evidence. It is an admitted fact that the charges for the shipment were Rs. 1107/- and the Complainant had booked a shipment for Australia on 30.04.2008 vide receipt No.500212265 Ex-P/2 which was returned back on the objection that the address was incomplete. The envelope which was returned is Ex-P/1. It is also an admitted fact, that on 12.03.2008 the Complainant had also booked a shipment through the Respondent Company for Australia on the same address which was delivered to the addressee, the proof of the same is receipt Ex-P/3 .There is also an admission by the Respondent Company that the consignment dated 12.03.2008 was delivered to the addressee in Australia on the same address proves the version of the Complainant, that it was due to the negligence and faulty service of the Respondent Company that the consignment dated 30.04.2008 vide receipt Ex-P/2 could not be delivered to the addressee on the same address at Australia. .However the Petitioner has failed to prove any actual damages, which he had suffered due to the negligence of the Respondent Company, as he had admitted in his cross examination that he has not attached any documents with his Complainant which were dispatched through TCS vide receipt Ex-P/2 or

to prove that the examination was to be conducted on 01.07.2008. During cross examination, it has been further proved by the Respondent Company themselves, that the Admission Forms of the Complainant were delivered through FedEx vide receipt Ex-P/4 and also through TCS vide receipt Ex-P/3 on the same address. However the Complainant has not placed on record any documentary evidence to prove that he had suffered physical or mental agony, nor he has placed on record Fee Certificate to prove that he had paid any Legal Fee amounting to Rs. 10 Lac. During cross examination the Complainant has admitted he was earning a salary of Rs. 20000/- per month. It is unbelievable that a person who is earning a salary of Rs. 20000/-PM could pay a fee of Rs. 10 Lac.

6 On the other hand RW-1 Jamsheed Akhtar Area Operational Manager TCS who has appeared on behalf of the Respondent Company has proved the delivery of consignment dated 12.03.2008 vide receipt Ex-P/3 and had not denied the non-delivery of consignment dispatched through receipt Ex-P/2. He has admitted in cross examination that the address of the shipper and consignee are the same as given on receipt Ex-P/2 and Receipt Ex-P/3 He has also admitted that the consignment No 550021265 is the same as given in Para No.1 of the Complaint and receipt dated 30.04.2008 Ex-P/2 .He has also admitted that envelope Ex-P/1 was issued by them.

7 As far as the objection of the counsel for the Respondent is concerned that the Respondent has not been properly sued is not supported by any documentary evidence. Under the law no suit should fail due to mere technicalities as laws favours adjudication on merits. The Respondent TCS Company is a Private Limited Company, being a juristic person can sue and be sued in its name and it does not affect the form of the complaint or suit. The documents placed on record at the time of closing of evidence by the Petitioner Ex-P/5 is discarded and cannot be

read in evidence as the same was not relied upon nor attached when the Complaint was filed. Even at the time of filing of the Complaint the same was in the possession of the Complainant. The Complainant has a cause of action to file this Complaint. This Complaint is maintainable before this Court as the Complainant is a Consumer and the Respondent is a service provider under the Punjab Consumer Protection Act 2005.

The Complaint is accepted. However the Complainant is not entitled to any damages, as he is failed to prove the same as envisaged under Section 15 of the Punjab Consumer Protection Act 2005. The Respondent shall refund the shipment charges amounting to Rs. 1107/- and shall pay Rs.5000/- as costs and compensation amounting to Rs. 600/- according to the conditions laid down on the back side of Receipt Ex-P/2 and Ex-P/3. All these amounts shall be paid within 10 days from the date of this Order.

File be consigned to record room after due completion.

Announced
12.12.2008

Presiding Officer
District Consumer Court
Lahore.

Certificate Certified that this Order consist of Six (6) pages which have been dictated, read, corrected and signed by me.

Announced
12.12.2008

Presiding Officer
District Consumer Court
Lahore.