

**IN THE COURT OF MR. TAHIR PERVEZ DISTRICT &
SESSIONS JUDGE, DISTRICT CONSUMER COURT,
SAHIWAL.**

Date of institution:-14-07-2011 Dated of Decision :- 18-10-2011

**MUHAMMAD ANWAR S/O MUHAMMAD ISMAEEL CASTE JUT R/O CHAK NO. 47/3-R,
TEHSILE & DISTRICT OKARA.**

-----PETITIONER

Versus

**HAJI ABDUL AZIZ-AKRAM SEED MERCHANT 93, MASJID GOOL CHOK, TEHSILE &
DISTRICT OKARA.**

-----DEFENDANT

CLAIM FOR THE RECOVERY OF DAMAGES TO THE TUNE OF RS. 2,50,000/-

ORDER.

1. Muhammad Anwar has filed a claim of Rs. 2,50,000/- (Two lac fifty thousand rupees) as compensation regarding loss to his ‘Tinda’ crop (a kind of vegetable) for supply of defective, sub-standard and bad quality seeds by the defendant Haji Abdul Aziz.

2. The claimant is a cultivator by profession. He purchased 2.5 kg Tinda seeds from the defendant with assurance that it would give 98% results. The claimant used the seed in field but it did not give requisite results. The claimant contacted with the defendant appraising him about the loss caused to him. The defendants assured to compensate him but failed. Thereafter, the claimant approached the

office of Seeds Certification and Registration Department, Government of Pakistan, Sahiwal. The said Department, after proper examination, inspection of crop and test, verified that the quality of seeds purchased by the claimant was poor due to which it did not give the proper results. Claimant issued a legal notice as required u/s 28 (1) of the Punjab Consumer Protection Act 2005 but the respondent refused to accept its service. Resultantly, claimant filed the instant complaint with prayer to award him claim of Rs. 2,50,000/- (Two lac fifty thousand rupees) due to loss sustained by him.

3. The defendant was served in accordance with the law but he did not appear in the court inspite of publication in press. Therefore he was proceeded against *exparte*.

4. The claimant, in *exparte* evidence, examined himself as Pw-1. He also placed on record receipt regarding purchase of seeds Ex-p1, test of laboratory regarding quality of seeds Ex-p2, legal notice Ex-p3, and its refusal return proof Ex-p4 alongwith the post office receipt Ex-p5. He also produced Muneer Ahmads Pw-2 in support of his contention.

5. Muhammad Anwar claimant reiterated facts incorporated in the claim. He stated that he had purchased "Tinda" seeds (a kind of vegetable) from the respondent. He tendered in evidence original receipt regarding purchase of seeds as Ex-p1. He also stated that due to defective seeds sold by the defendant, his land could not give the desired results causing a loss to him. He assessed the damages/compensation to his crop to the tune of 2,50,000/-. According to him, he had also approached to the concerned authority for verification about the quality of

seeds. He was informed through letter Ex -p2 that the seeds were defective due to which proper results could not be achieved.

6. Muneer Ahmad pw-2 deposed that he being neighbourer to the claimant, had accompanied him for the purchase of seed from the defendant but the seeds supplied to him, were defective due to which, claimant had to suffer. He also verified that the claimant moved an application to the Agriculture Department for verification of his loss. After spot verification, the concerned authorities verified that the seeds supplied by the respondent were defective.

7. The factum of purchasing of "Tinda" seeds from the defendant stands proved on record through oral evidence of Muhamad Anwar pw-1. Muneer Ahmad Pw-2 and receipt Ex-p1. Government of Pakistan, Federal seeds Certification and Registration through letter Ex-p2 verified that the crop of the claimant was visited and the same was found poor in germination which was estimated @ 2.5% and it was confirmed poor quality of seeds. The same Department also verified that the complaint regarding supply of poor seed was valid. However, the Department refused to award compensation to the claimant for loss caused to him because of supply of substandard seeds by the respondent as no such provision was contained in the Seeds Act 1976. The assertion made by the claimant that he issued legal notice to the defendant as required u/s 28 (1) of the PCPA 2005 found support from Ex-p3 and p4.

8. The evidence produced by the claimant remained unrebutted as no one had turned up on behalf of the defendant to produce any evidence in defence/rebuttal. It stands therefore, established on record that the claimant purchased Tinda seeds from the defendant and that same were defective as it could not give requisite 98%

results and the germination of field crop belonging to the claimant remained 2.5 %. Obviously the claimant had to suffer a loss to his field, prospective crop and proceeds likely to be earned despite labour put in by him.

9. Under clause D of the Section 2 of the PCPA 2005 “ damage” means all damage caused by a product or service including damage to the product itself and economic loss arising from a deficiency in or loss of use of the product or service. The term “ manufacturer” included a person or entity who, as a seller, exercises control over the design, construction or quality of the product that caused damage.

10. It may be reiteration but the fact was that the claimant had to suffer loss because of defective “Tinda” seeds supplied by the defendant. Seeds supplied by the respondent was to give 98 % results but the same were found poor in germination giving 2.5% results which confirmed that seeds supplied by the respondent were defective, substandard and poor in quality. Thus claimant was entitled to claim damages/compensation.

11. However, quantum of damages claimed by the claimant was controversial. It was settled law that the claimant was required/supposed to give category/item wise detail of damage and loss sustained by him due to poor quality seeds but the claimant assessed the loss sustained by him to the tune of Rs, 2,50,000/- in a general manner without given its minor detail. Thus, under the circumstances, only tentative assessment of damages caused to the claimant can be made.

12. In view of my findings and reasons recorded above, the claim of the petitioner is accepted but with certain modification as detailed below.

1. The defendant shall return the price of seeds i.e Rs. 5500/- to the claimant.
2. He shall pay Rs. 78,000/- as loss suffered by the claimant in a bid to get good crop by using defective/poor quality seeds supplied by him including counsel fee.
3. The defendant is held responsible to pay damages/compensation to the tune of Rs. 41,500/- to the claimant.

13. The defendant will pay Rs. 1,25,000/- (One lac twenty five thousand rupees) in total to the claimant within 30 days from this order. Registrar of this court is directed to send the copy of the order to the defendant for immediate compliance.

Announced

18-10-2011

Tahir Pervez
District & Sessions Judge/District Judge
Consumer Court Sahiwal

Certified that this order consists of five pages, which have been dictated and signed by me.

Tahir Pervez
District & Sessions Judge/District Judge