

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. VNTEC: 0649239094.)

Mohammad Qurban Hussain Versus Mohammad Ishaq

Old Complaint/ Case No:	713 / 55 / 10.
Date of Institution:	25-02-2010.
Date of 1 st Decision:	31-01-2011.
2 nd Old Complaint/ Case No:	1545 / 248 / 11.
Date of Restoration:	16-06-2011.
Date of 2 nd Decision:	31-10-2011.
New Complaint Case No:	1959 / 662 / 11.
Date of Restoration:	29-11-2011.
Date of Final Decision:	30-05-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

The claimant is represented by Sardar Safdar Shakeel Khan Kulyani Advocate while the defendant is represented jointly by Zahid Sher Khan Lund Advocate & Mohammad Zafar Khan Lund Advocate.

2. The case is at the stage of the **arguments**. I have heard the arguments and perused the record in the light of the arguments. Now I proceed to discuss and **dispose off** the complaint in accordance with the findings in the following paragraphs.

3. Briefly stated the grievance of the claimant as alleged in the complaint is to the effect that the battery purchased by him from the defendant with warranty of six months has become defective within warranty period; that the same has been refused to be returned or replaced; that the legal notice has remained un-responded. The claimant has prayed for change of battery and grant of Rs. 10,000/- as damages along with litigation charges and any other relief which may be admissible.

4. The defendant has contested the complaint by filing his written statement. His version is to the effect that the battery was not got checked in every month and signatures of the dealer were to be obtained after every inspection according to the conditions of sale; that the battery was not produced for lodging the complaint within the period of warranty; that the actual period for return was one month; that after one month, the claim was to be segregated in accordance with the period of use; that AGS company has not been impleaded as party; that the complaint is and filed to harass the defendant and to get immoral benefit with mala fide intention; that the date mentioned as 18-11-2009 mentioned in the complaint is incorrect; that the same is actually 18-12-2009; that the battery was returned on 22-03-2010 and a certificate was issued by the AGS dealer about correctness of the battery on 29-03-2010; that the claimant never contacted afterwards. The defendant has prayed that the complaint should be dismissed and he may be awarded Rs. 10,000/- as special costs.

5. It is pertinent to note that **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 in the pleadings however regular evidence has been recorded in the present case in accordance with Rule 6 (a) at page 37 of the Revised National Judicial Policy 2009 read with Order XXVI of CPC through the learned Local Commissioner (LLC) vide order dated 21-07-2011 by observing that evidence is necessary to be recorded for proper trial of the case while the report of the company was also obtained about fitness of disputed battery.

6. Oral evidence of the claimant consists of the statement of the claimant as PW-1 recorded through the appointment of an Advocate as the learned Local Commissioner (LLC) and statement of learned counsel for the claimant about production of documentary evidence.

7. Documentary evidence of the claimant consists of original affidavit of the claimant as Ex.P-1; original fee certificated as Ex.P-3; original postal receipt as Ex.P-4; original receipt as Ex.P-5; another original receipt as Ex.P-6; original disputed battery (kept in the custody of the secretary of the court) as Ex.P-7; copy of guarantee card as Mark P.A; copy of legal notice as Mark P.B; another copy of guarantee card as Mark P.C; copy of receipt as Mark P.D; another copy of guarantee card as Mark P.E; copy of CNIC of the defendant as Mark P.F; copy of CNIC of the claimant as Mark P.G; original affidavit of Mohammad Arshad witness as Mark P.H.

8. Oral evidence of the defendant consists of his own statement as DW.1 and statement of learned counsel for the defendant about reliance on the documentary evidence available in the file.

9. Documentary evidence of the defendant consists of the report of the representative of the manufacturing company as Ex.D-2; copy of order of this court about observation of the battery as Mark D.1.

10. I have observed that the claimant has not examined the witness namely Mohammad Arshad whose affidavit is produced as Mark P.H although said affidavit of the said witness was considered during previous exparte decision while the same cannot be read in evidence due to absence of cross examination. The alleged defect of disputed battery cannot be proved by the solitary statement of the claimant while the certificate of the representative of the manufacturing company produced as Ex.D-1 shows that the battery was found correct even after expiry of the period of warranty.

11. It is also observed that the claimant was bound to get the battery checked from the dealer once in every month and also to get it recharged every month from the dealer according to the terms and conditions and since he has not complied with the said conditions as such he is not entitled to any relief because he is found to use the battery without regular checking.

12. As far as the request for grant of damages 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.

13. 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.

14. 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 the recovery of the damages or compensation or litigation charges.

15. It is therefore concluded that since the complaint has not been proved during contested proceedings by cogent evidence therefore the claimant is not entitled to the replacement of disputed battery and also not entitled to recovery of damages or compensation or litigation charges or counsel fee.

16. For what has been discussed above, the complaint is hereby dismissed while disputed battery is directed to be returned to the claimant after expiry of the period of appeal and if the same is not received by the claimant within one month after expiry of the period of appeal then the same is to be disposed off by sale as scrap and the price is to be deposited in the bank account of this court as fine at the responsibility of the Registrar of this court.

17. The parties are left to bear their own costs.

*18. This order would become final u/s 34 of PCP Act 2005, if the **appeal** is not preferred within period of 30 days under S.33 of PCP Act 2005 & Rule 18 of PCP Rules 2009 in accordance with the Rules of Procedure of Honourable High Court.*

*19. 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 in token of receiving in Dak Register with the clarification that extra copies would be liable to be issued at their own expenses.*

*20. 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:
30-05-2012.

(MIRZA JAWAD A. BAIG)
D. & S.J./P.O., D.C.C., Districts:
D.G.Khan; Layyah; Muzaffargarh; Rajanpur,
Divisional Headquarter, D.G.Khan.