

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. VNTC: 0649239094).

Mohammad Bilal Versus Proprietor Multan Diagnostic Center & 2 others

Old Complaint/ Case No:	1351 / 54 / 11.
Date of Institution:	28-01-2011.
Date of 1 st Decision:	31-10-2011.
New Complaint/ Case No:	1854 / 557 / 11.
Date of Restoration:	31-10-2011.
Date of Decision:	18-05-2012.

COMPLAINT ABOUT FAULTY SERVICES

ORDER:

The claimant is represented by Syed Haider Ali Bukhari Advocate & Hashim Sher Khan Advocate while the defendants are represented by Malik Mohammad Ijaz Khokar Advocate along with the representatives.

2. The case is at the stage of the remaining **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 is to the effect that he has incurred expenses mentioned in the complaint on obtaining the passport and visa and repeated medical tests conducted simultaneously by defendants No. 2 & 3 culminating in the unfit report for the purpose of going abroad. He has demanded the recovery of damages and expenses and litigation charges including counsel fee and clerk fee and medical charges as detailed in the complaint amounting to Rupees ten million, eight Lakh, fifteen thousand, eight hundred, fifty in total.

4. Defendants have **contested** the complaint by filing their joint written statement and raised certain preliminary objections and defended the report about unfitness of the claimant and highlighted the incorrect date mentioned in the complaint as 01-12-2011 which was yet to come at the time of the filing of the complaint and repeated their offer for re-examination of the claimant and requested for dismissal of the complaint with costs and grant of any other admissible relief.

5. 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 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 30-04-2011 by observing that even the legal objections contained in the written statement can not be properly determined without establishing factual grounds contained in the complaint.

6. Oral evidence of the claimant consists of the statement of the claimant as PW-1; Ahmad Bakhsh as PW-2; Asif Rasheed as PW-3; Doctor Syed Hasnain Irshad as PW-4 having been recorded through the appointment of an Advocate as the learned local commissioner (LLC).

7. Documentary evidence of the claimant consists of the report of Jinnah Clinical Laboratory as Ex.P-1; original report of Pad Laboratory as Ex.P-2; original receipts of courier service as Ex.P-3 to Ex.P-6; copy of the license of Haider Ali Bukhari Advocate as Mark P.1; copy of the license of Hashim Sher Khan Advocate as Mark P.2; copy of CNIC of the claimant as Mark P.3; copy of legal notice as mark P.4; copy of the proforma of visa as Mark P.5; laboratory report dated 01-12-2011 as Ex.PW-4/A; laboratory report about unfitness as Ex.PW-4/B.

8. Oral evidence of the defendants consists of the statement of the administrative as representative namely Mohammad Pervez as RW.1; Dr. Mohammad Ramzan Khan defendant No.2 as RW.2; Mohammad Naveed representative of defendant No.3 as RW.3; Abdul Rehman Accountant of the defendants as RW.4.

9. Documentary evidence of the defendants consists of unfitness laboratory report as Ex.D-1; copy of the reply of the legal notice as Mark D.A.

10. I have observed that it is the admitted rule that the subject person cannot go abroad after unfit report if the said report is sent online but the subject has option to submit himself for further test after three months while the result of the present claimant was not sent online as stated by RW-1. It is also stated that the limit of expiry of the visa is normally two years. It is therefore observed that the claimant had the option to get him examined again after three months from some other recognized laboratory but he is shown to have examined himself from such other laboratory of PW-4 which was admittedly not recognized for fitness report. The claimant is therefore entitled to the fresh test from any other recognized laboratory.

11. I have observed from thorough perusal of the evidence that it has been stated by PW-4 being the doctor who has conducted parallel test of the claimant that it cannot be stated on the basis of negative report about the concerned disease that the person is completely healthy therefore I find that the claimant cannot claim himself completely healthy on the basis of the said report. He is therefore liable to be tested once again by third laboratory to ascertain his fitness for going abroad. It is also observed that

the claimant has not proved the allegation about demand of Rs.1,00,000/- as bribe by the defendants for issuance of fitness report. The claimant has also not proved that previous fitness report was kept by defendants. It is therefore observed that the claimant is entitled to the cancellation of unfit report and also entitled to get him examined from any other laboratory for fitness so as to remove the clog.

12. As far as the request of the claimant 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 Consumer Court 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.

15. In accordance with above discussion, the complaint is partly accepted to the extent of the cancellation of the disputed report about unfitness of the claimant along with the direction for conducting fresh medical test of the claimant from any other recognized laboratory for the purpose of determination of health condition of the claimant for going abroad to any foreign country while the complaint is dismissed to the extent of remaining relief.

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

17. *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.*

18. *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 defendants that the **costs** to be*

incurred for and during the application for implementation would be liable to be recovered from him.

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:
18-05-2012.

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