

IN THE COURT OF *MIRZA JAWAD A. BAIG*, DISTRICT & SESSIONS JUDGE,
PRESIDING OFFICER, DISTRICT CONSUMER COURT,
DISTRICTS: D.G. KHAN; LAYYAH; MUZAFFARGARH; RAJANPUR,
50/Z, MODEL TOWN, DIVISIONAL HEAD QUARTER, DERA GHAZI KHAN.

(PHONE: PTCL No. 0642474100) (FAX No. 0642470496).

Ali Irfanullah Lund versus Zafar Iqbal & 1 other

Complaint / Case No 1644 / 347 / 11.
Date of Institution: 26-08-2011.
Date of Decision: 19-01-2012.

COMPLAINT ABOUT FAULTY SERVICE

ORDER:

Claimant is represented by his learned counsel namely Amanullah Khan Lund Advocate alongwith claimant in person while the defendants are being represented by Mohammad Talib Khan Daudi Advocate alongwith one of the defendants namely Rehan in person.

1. The case is at the stage of the arguments which have been heard and file has been perused as such I proceed to discuss and dispose off the complaint in the light of the arguments in accordance with the findings in the following paragraphs.

2. Briefly stated the version of the claimant is to the effect that he paid Rs.6000/- as advance payment for repair of his refrigerator to the defendants but the repair was delayed in extreme hot season; that after the repair it was found that the water tray was missing alongwith front door lamination and adjustment nut bolts and lower door was not closed properly; that the defendants started quarreling on raising objection; that the claimant has demanded Rs.10000/- as cost of devaluation, Rs.20000/- for mental and physical tension; that he has issued legal notice; that the defendants have refused, hence this complaint.

3. The version of the defendants in their joint written statement is to the effect that the claimant has no cause of action; no locus standi; complaint not maintainable in present form; based on malafide; liable to be dismissed; that the claimant has never brought the fridge at the shop of the defendants; that no conversation had taken place between the claimant and the defendants; that the receipt was issued to one Ali Raza with parentage and address; that the defendants have been bothered without any legal

justification; that the defendants are entitled to special costs; that the fridge was handed over to said Ali Raza after proper checkup; that no transaction or contact took place with the claimant; that notice has not been received; that special costs should be paid to the defendants; that complaint should be dismissed.

4. On 25-10-2011 defendants produced one Ali Raza in person as defense witness who filed his affidavit in favour of the defendants who was directed to appear as witness in evidence of the defendants.

5. It has been pointed out by learned counsel for the claimant that evidence is not necessary to be recorded because it is admitted by said Ali Raza in the affidavit that the fridge which was got repaired by him from the defendants belonged to the present claimant. It is also contended that the defendants cannot deny their liability because they have produced said affidavit in their own favour which is actually against them.

6. 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 as observed in order dated 25-10-2011 but keeping in view the affidavit produced by the defendants it is observed that the evidence is not required to be recorded and 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 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 just like the present case.

7. At this stage, it is being settled between the parties that the fridge should be repaired once again by the defendants about the defects pointed out in the complaint without additional charges.

8. As far as the request for action against the defendants 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.

9. 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.

10. 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 recover the damages or compensation or counsel fee or litigation charges through this court under the law of consumers.

11. In accordance with above discussion, the complaint is disposed off with the direction for the fresh repair of the disputed refrigerator without additional costs to the extent of the defects pointed out in the complaint to the satisfaction of the claimant while the complaint is dismissed to the extent of the recovery of damages, devaluation charges and counsel fee.

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

13. *The claimant is entitled to get this 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 also be liable to be recovered from the defendants.*

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

15. *A copy of this order is directed to be made available for publishing on the internet to the website of Punjab Consumer Protection Council Secretariat, 135-J, Model Town, Lahore for public disclosure and easy access of information to the consumers relating to the products and services in accordance with Rule 25 of PCP Rules, 2009.*

16. *The file of this complaint is to be consigned to the record room 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:
19-01-2012.

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