

Major Dr. Abdullah Khan Versus Mazhar Abbas & 2 others

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) (VNTC No. 0649239094) (FAX No. 0642470496).

Major Dr. Abdullah Khan Versus Mazhar Abbas & 2 others

COMPLAINT ABOUT TRAVEL AGENCY

Complaint / Case No:	1046/388/10.
Date of Institution:	06-08-2010.
Date of Order:	15-09-2011.

ORDER:

Present learned counsel for the parties alongwith attorney of the claimant in person.

1. This case is at the stage of final arguments which have been heard today as such I proceed to dispose off the complaint by discussion in the following paragraphs.
2. Briefly stated the facts alleged in the complaint are to the effect that the claimant had allegedly contacted with the defendants for arrangements about performance of Umra and for obtaining Visas and return tickets for himself and for his wife; that the agreement was performed with the defendants about providing Visa package consisting of stay in double bed room of a three star hotel at the distance of 100 to 150 Meters from Nabwi Mosque and shrine of the prophet (PBUH) for consideration of Rs.86,000/- for each person; that the claimant paid Rs.25,000/- as advance payment to the defendants through and in presence of Javaid Iqbal Sial Advocate alongwith handing over 02 passports and 02 ID cards and passport size photographs; that the defendants obtained Visas and tickets through Makkah Travels and Jamal-e-Hira Travels & Tours Karachi; that after few days on the call of Ghazanfar Abbas, the amount of Rs.50,000/- was transferred to the account of Makkah Travels through the ATM of Habib Bank Nishtar Branch Multan from the account of Javaid Iqbal Sial Advocate under receipt; that after few days on contact it was informed by the defendants that amount of Rs.93,400/- for each person was to be paid instead of agreed amount of Rs.86,000/- per head; that it was told on talk with Ghazanfar Abbas to Javaid Iqbal Sial Advocate that Rs.8,000/- per head were being demanded by the defendants in excess of agreed amount; that that on protest of the claimant the defendants threatened that advance payment would not be returned; that the claimant fulfilled the unjustified demand of the defendants by payment of additional amount of Rs.1,12,000/- paid in cash by Tahir Abbas Sial to Mazhar Abbas at Bhutta Super Sufian Travels ; that the passports and visas and tickets etc were sent by Ghazanfar Abbas Bhutta of Mecca Travels Karachi through T.C.S at address of Javaid Iqbal Sial Advocate at Multan after payment of excess amount; that the room provided for stay at Jeddah city was not of three star hotel and the same was situated in a commercial building which was not upto the standard of even one star hotel; that during onward stay at city of Madina, the residential room was not capable of living and not of three star hotel and at the distance of 500 /600 meters; that the fan and fridge was

not in working condition; that the claimant and his wife suffered from mental agony and distress due to the said condition of the room; that it was learnt by the claimant from other performers of Umra that they had come on payment of Rs.70,000/- each; that the defendants have inflicted mental anxiety by their conduct; that the claimant and his wife could not perform prayers and visits properly due to the physical and mental tension; that the defendants abandoned the telephone calls of the claimant; that afterwards defendant No.1 promised to return excessive amount of Rs.46,800/- but refused subsequently to pay the same; that the other defendants have not responded to the legal notices twice sent however defendant No.1 is threatening the claimant; that the defendants were bound to provide proper services; that they have violated the Islamic injunctions and also violated the provisions of the Punjab Consumer Protection Act 2005 by their omission to provide required facilities; that the claimant has suffered extra expenses on journey between Bahawalnagar, Alipur, Dera Ghazi Khan; hence this complaint with request for the recovery of the excess amount of Rs.46,800/- alongwith damages amounting to Rs. 1½ Crore from the defendants.

3. Defendants were proceeded against exparte due to their absence during initial proceedings of the present complaint however exparte order was cancelled to the extent of defendant No.1 on his application and the complaint is being contested by defendant No.1 only by filing his written statement.
4. The version of defendant No.1 incorporated in the written statement is to the effect that he has not received any amount towards alleged transaction; that he does not know the claimant; that the defendant has no concern with the other defendants; that he has no contact with Mecca Travels. He has raised preliminary objections about jurisdiction of this court and period of limitation and non impleading of the owners of Mecca Travels and absence of cause of action. He has requested for the grant of Rs.1,00,000/- as damages and dismissal of the complaint.
5. In accordance with the requirement of S.30 PCP Act 2005, the parties were directed to produce their evidence through appointment of learned Local Commissioner (LLC) for recording the evidence subject to the payment of fees to be paid by the parties.
6. The evidence produced by the claimants consists of the statement of claimant No.1 as AW-1; Javaid Abbas Sial as AW-2; Tahir Abbas Sial as AW-3.
7. Documentary evidence produced by the claimant consists of the snaps about stay during the pilgrimage as Ex.A-1 to Ex.A-23; original postal receipts as Ex.A-24 to Ex.A-25; original AD postal acknowledgement cards as Ex.A-26 to Ex.A-29; envelope of TCS as Ex.A-30; receipt of ATM as Ex.A-31 produced during the statement of AW-2; photo copies of the passports as Mark-A to Mark-B produced during the statement of AW-1; copy of voucher of Jamal Air Travels as Mark-C; copy of telephone date of Javaid Abbas Sial also as Mark-C; copies of legal notices as Mark-D to Mark-J; receipt about payment of Rs.25,000/- as Mark-K copies of tickets as Mark-M and Mark-N.
8. Oral evidence of the defendant consists of his own statement as D.W-1.

9. Documentary evidence of the defendant consists of the original invoices of the OCS Pakistan (PVT) Ltd as Ex.D-1 to Ex.D-4.
10. The rulings relied upon by learned counsel for defendant No.1 in support of his arguments consist of the rulings reported as PLD 2010 SC 965 and 2010 SCMR 1883.
11. I have observed from critical perusal of the oral and documentary evidence of the parties with reference to the pleadings in the light of the arguments and the rulings that since the basic story narrated in the complaint is about the personal contact of the claimant with the defendants with specific reference of personal contact with defendant No.1 while the said story is negated from the evidence in which the claimant has admitted that he had no personal contact with the defendants.
12. As far as the visiting card is concerned which has been produced as Mark-31 which is shown to have been endorsed by defendant No.1 about receipt of the advance amount of Rs.25,000/- but I find that since the same is of Super Sufian Travels Company while the services of Jamal-e-Hira Travels Company were hired for providing the required facilities during Umra as mentioned in the voucher produced as Mark-C by Makkah Travels Company as such it is not proved by the claimant by the production of the visiting card of defendant No.1 that the said services were hired by Super Sufian Travels Company through Makkah Travels Company. The claimant is therefore not entitled to recover the said amount from defendant No.1.
13. As far as the snaps of the disputed hotels produced as Ex.A-1 to Ex.A-23 are concerned, I find that the same relate to the services of Jamal-e-Hira Travels Company on the basis of the copy of the voucher produced as Mark-C but of no use against the presently impleaded defendants because the said company is not party to the present complaint.
14. On the other hand, defendant No.1 has claimed in his evidence that he had no contact with the claimant as such I find that the claimant has failed to prove his version at least against defendant No.1 therefore the complaint is liable to be dismissed to the extent of defendant No.1.
15. As far as the version of the claimant against exparte defendants No. 2 and 3 is concerned, the same is only to the effect that the amount of Rs.50,000/- is alleged to be sent through ATM by AW-2 to the account of Makkah Travels on asking of defendant No.2. Since the said defendants are being proceeded against exparte and since the claimant has proved the said payment by production of the receipt of ATM as Ex.A-31 therefore I find that he is entitled to recover the said amount from exparte defendants No. 2 & 3.
16. As far as the claim about recovery of the excessive amount of Rs.46,800/- from defendant No.1 is concerned, the same is not proved because said to be paid to defendant No.1 without receipt by AW-3 as such cannot be recovered by the claimant.
17. As far as the prayer about the recovery of the damages is concerned, it is hereby observed that: the return of the consideration or a part thereof and the costs is provided in the law where the consumer has suffered the loss of

utility or lack of benefit only while the manufacturer or service provider is also liable for the damages where the consumer has suffered any damage from the defective product u/s 10 & faulty service u/s 15; that the manufacturer or service provider is liable to a consumer for damages proximately caused by the defective product u/s 4 & faulty service u/s 13; that the liability of the manufacturer or service provider is not limited or excluded by the terms of any contract or notice about the defective product u/s 12 & faulty service u/s 17; that the disclosure of the details has been made essential about the product and service where the nature of the same is such that it is material to the decision of the consumer to enter into the contract with reference to the product u/s 11 & service u/s 16; that the standard for the provision of services is determined as such which a consumer could reasonably expect to obtain in Pakistan at the time of the provision of the service u/s 14; that the court is authorized to direct the defendant to pay reasonable compensation for any loss suffered due to negligence of the defendant u/s 31(e); that to award damages where appropriate u/s 31(f); that to award costs including lawyer's fees incurred on the legal proceedings u/s 31(g) of PCP Act, 2005.

18. 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. Since there is no explanation in the present claim about any other damages except the loss of utility or lack of benefit as such I find that the claimant is not entitled to recover the damages from defendant No.1 in the given circumstances.
19. As far as the recovery of 1½ Crore rupees as damages is concerned, it is observed that the same could have been recovered to the relevant extent by filing the complaint against 'Jamal-e-Hira Travels & Tours' but since there is no complaint against the said company as such the claimant is not entitled to recover the said damages from the presently impleaded defendants.
20. It is clarified that the right of the exparte defendants is reserved for one month with reference to Rule 14 of PCP Rules 2009 to move the application for cancellation/ modification subject to clarification that the application for setting aside of this order, if filed on behalf of the exparte defendants for taking the benefit of exparte nature of the order then the whole claim would be deemed to have been restored to the extent of the said defendants including the part of claim which is not being granted presently, while the possibility for the grant of the remaining relief would be considered on its own merits during the fresh proceedings, in accordance with law while the findings relating to contesting defendant No.1 would be liable to be kept intact even after the restoration of the case relating to the exparte defendants.
21. As far as the cross claim of defendant No.1 about grant of damages is concerned, it is observed that since the claimant has proved his version to the extent of the payment of Rs.50,000/- to defendant No.3 on demand of defendant No.2 as such his claim is justified to the said extent while the damages could have been granted to defendant No.1 in case of the total falseness of the claim of the claimant as such the request for grant of damages to defendant No.1 is rejected.

22. The net result of above findings is that the complaint is partly accepted as *exparte* against defendants No.2 & 3 to the extent of the recovery of Rs.50,000/- while the same is completely dismissed to the extent of defendant No.1 and also dismissed to the extent of the remaining claim to the extent of *exparte* defendants.
23. *Claimant is entitled to get the order implemented by filing the application for implementation, if so required.*
24. *The exparte defendants No.2 & 3 would be liable to suffer simple imprisonment up to 3 years with fine up-to Rs.20,000/- and liability of recovery of fine as arrears of Land Revenue in default of the payment of fine, concurrently with attachment and auction of official belongings as well as personal immovable property u/s 32 of PCP Act 2005 read with S.36 of PCP Act 2005, in case of deliberate delay in compliance with this order.*
25. *The amount of fine if recovered would be liable to be credited in the Government Treasury under the relevant head of account.*
26. *This order would become not become final u/s 34 of PCP Act 2005, if the appeal is 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 or if the application for cancellation is filed by exparte defendants under Rule 14 PCP Rules 2009 during the said period.*
27. *A copy of this order would be 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.*
28. *The file of this court is to be consigned in the record room duly page marked with proper index and made available for issuance of attested copies to any applicant and kept under safe custody till the period fixed for destruction, after due completion.*

Announced:
15-09-2011.

(MIRZA JAWAD A. BAIG)
D. & S.J./ P.O., D.C.C., D.G. KHAN.