

IN THE NAME OF ALLAH ALMIGHTY, THE MOST GRACIOUS AND THE MOST MERCIFUL.

**IN THE COURT OF CHOUDHARY MUHAMMAD YOUSAF AUJLA,
PRESIDING OFFICER/ADDITIONAL DISTRICT & SESSION JUDGE,
FAISALABAD.**

Yasir Shabbir vs. Mr. Tanveer, Executive Chaudhary & Company etc.

CLAIM FOR RECOVERY OF DAMAGES Rs. 160,000/-

ORDER:-

The claim has been made by the claimant that he is a noble and reasonable citizen and is running his own business and also has been engaged under National Internship Program in the office of Federal Ombudsman, at regional office Faisalabad and he made a payment of Rs.101,000/- to the defendants to get on lease a Suzuki Alto (VX) car from the defendants, who were carrying on their business at the name and style of Choudhary & Company (Registered) and made a payment of processing fee Rs.1,000/- and Rs.35,000/- as down payment on 09.07.2007 and remaining amount of Rs.65,000/- was paid on 04.08.2007 and the defendants promised to deliver a car within a period of seven to ten days, but despite repeated requests made by the claimant by physically presence, on mobile and PTCL numbers, the defendants did not fulfill the promise and ultimately owing to their failure in the delivery of car, returned the amount Rs.101,000/- to the claimant after period of about 2/3 months. The claimant is now unable to get a new car due to 4% rise in the prices of cars which occurred during the delay time and the claimant also claims Rs.80,000/- for mental torture, Rs.40,000/- for loss of

his precious time and Rs.10,000/- as miscellaneous expenses and the claimant has also requested for the recovery of Rs.10,000/- as rise of own amount from the defendants.

The claim was hotly contested by the defendants agitating the jurisdiction of court, which was turned down vide order dated: 21.11.2007. On merits the defendants also contested the claim that terms were settled

orally and period for delivery of car was maximum of three months and it was impossible to deliver a car within the period of seven to ten days and the amount deposited by the claimant worth Rs.101,000/- was returned on his request on 03.10.2007 and now the claimant is stopped by his conduct to file the claim.

The claimant himself appeared as PW-1 and produced the receipts of payment as Ex-P/1, Ex-P/2 and Ex-P/3. The defendant No.1 Mr. Tanveer Dastgeer and the defendant No.2 Mr. Rasheed Ahmed Gujjar also appeared as DW-1 and DW-2 with their respective affidavits as Ex-DW-1/1 and Ex-DW-2/1 respectively.

I have given a considerable thought to the arguments advanced at the bar and scanned the evidence of the parties very carefully. The claim made by the claimant to the extent of payment the processing fee and down payment of Rs.101,000/- is admitted by the defendants. The question under dispute is the period of delivery of car to be made by the defendants, which as per version of the claimant was seven

to ten days, but as per version of the defendants it was maximum three months. The claimant while appearing as PW-1, has fully supported the averments of his claim, he was cross-examined at length and during the cross-examination it was suggested to the claimant that he had made the payment for the delivery of Suzuki Mehran car and not of the Suzuki Alto (VX) car. Whereas the receipts Ex-P-1, Ex-P-2 and Ex-P-3 on the file issued by the defendants goes to reveal that processing fee and down payment was received for the Suzuki Alto car (VX) car. The defendants took the version that the process was started on the completion of down payment made by the claimant on 04.08.2007 and that too for the Suzuki Mehran. There is no mention of this version taken by the defendants during evidence regarding the booking of Suzuki Mehran car in the written statement filed in the court, rather in the written reply of the claimant, the defendants admitted the contents of the claim of the claimant to the extent of booking of Suzuki Alto car and now the defendants have taken a different and contradictory version during the evidence. The payment of process fee of Rs.1,000/- made by the claimant on 04.09.2007 is an admitted fact and the process was to be initiated from the payment of processing fee as the same is meant for this and in this way the period of process started from 07.09.2007 and as the complete amount of down payment was made by the claimant up to 04.08.2007, the defendants were bound to deliver the car to the claimant with in period of seven to ten days from the above

mentioned date i.e 04.08.2007. The contention of the defendants is not plausible that the period for delivery of car was three months as the same does not stand mentioned in any of the documents i.e Ex-P/1 and Ex-P/2, the receipts issued by the defendants that the period of delivery would be three months.

The defendants are carrying on a business of delivery of goods on installments to the consumers at the name and style of a registered Firm Choudhary and Company and all the transactions/correspondence are being made by them in black and white, then it is a mockery, deception and misrepresentation with the consumers that the defendants do not settle the terms and conditions in writing. The claimant who is a Law graduate and is working in the office of Federal ombudsman under the National Internship Program had no previous enmity with the defendants and even the defendants admit that the claimant was not familiar to them prior to this transaction, so there is no ulterior motive attributed to the claimant against the defendants of false implication. The claimant made the payment of process fee with the defendants on 07.09.2007 and the down payment was paid by him of Rs.35,0000/- on 17.09.2007 and the remaining amount of Rs.65,000/- on 04.08.2007 and at that time as per copy of the list, the price of Suzuki Alto (VX-CNG) car was 4,62,000/- including freight charges Rs.8,000/- whereas on 02.10.2007 the price of this car rose up to 4,84,500/- including freight

charges of 10,000/-. The rise in the ex-plant price including sales tax of the said car stood at the difference of Rs. 22,500/-.

It was the duty of defendants to fully disclose their capabilities, qualifications of service and to get know the claimant all the terms and conditions on the basis of which they were delivering the goods on installments in black and white, duly scribed on a piece of paper but the same were neither disclosed to the claimant nor any such disclosure was shown by the defendants in the court. Accordingly the defendants are also guilty of violation of section 16 Punjab Consumer Protection Act, 2005 which reads as under:-

“Where the nature of the service is such that the disclosure of the capabilities or qualifications of the provider of the service or the quality of the product that he intends to use for provision of the service is material to the decision of the consumer to enter into a contract for provision of services, the provider of services shall disclose the same.”

The complainant gave a full detail of damages as how he stranded at cross roads to get the Suzuki car from the defendants for a period of about three months and though the claimant has omitted in his statement to explain the detail of damages but he has fully proved his claim against the defendants and the defendants have badly failed to rebut the claim of the claimant by producing any cogent evidence, rather the evidence produced by the defendants is self

contradictory and is not in conformity with the version taken by them in the written statement. Accordingly the claimant is entitled to recover from the defendants rise of price of motor car Rs.20,000/- and the compensation of Rs.20,000/- for loss of time, mental torture and miscellaneous expenses as claimed by him which shall be paid by the defendants jointly and severally.

As the defendants are also guilty of offence under section 16 of Punjab Consumer Protection Act 2005 for not disclosing all the terms and conditions to the claimant at the time of booking of the Suzuki Alto car, so they are also liable to the penalty to be imposed U/S 32 of Punjab Consumer Protection Act, 2005 and they are accordingly punished with a fine of Rs.10,000/- to be paid by them on or before 19.12.2007, in default of payment of fine, they shall under go a sentence of simple imprisonment for a period of one month each. Accordingly the claim is allowed with cost and the file be consigned.

Announced
13.12.2007

Ch. Muhammad Yousaf Aujla,
Presiding Officer/
Additional District & Session Judge,
District Consumer Court, Faisalabad