

22/2/22

**IN THE COURT OF MALIK KHIZAR HAYAT KHAN, DISTRICT &
SESSIONS JUDGE/PRESIDING OFFICER, DISTRICT
CONSUMER COURT, SARGODHA.**

Case No. 50/2016
Date of Institution 21.05.2016
Date of Decision 22.03.2018

Fakhar Ul Zaman son of Muhammad Wakeel,
Resident of Chak No. 64 SB, Tehsil & District Sargodha.
(Claimant)

Versus

- 1. Suzuki Falcon Motors through Manager Lahore road
Sargodha.**
- 2. Manager Area office Suzuki Auto Mobile company
7-A Aziz Avenue Canal Road Gulbarg Lahore.**
- 3. Head office Suzuki Auto Mobile Company Ltd.
Karachi through Managing Director M.D Pakistan Steel Industries Estate Bin
Qasim Karachi**
(Defendants)

**Sheikh Muhammad Osama Asif Advocate for the claimant.
Malik Muhammad Pervez Advocate for defendants.**

J U D G M E N T
22.03.2018.

This is a claim/complaint by Fakhar Ul Zaman petitioner/claimant against the defendants with the assertion that he purchased a vehicle namely Suzuki Ravi (pickup), Engine No. PKT284506, Chassis No. SR308PK389174 and registration No. SGT-15-1937 (as per photocopy of registration book Mark-F provided by the petitioner and the attested copy of the same provided by the defendants as Exh-D5) in lieu of Rs. 540000/- from the defendants through "Apna Rozgar Scheem" on monthly installments (due to the loan of the Bank of Punjab). He further narrated that the vehicle in question was delivered to him on 15.03.2016 and the fuel pump of the same became out of order on 29.03.2016 for which he approached to the defendant No.1 (an authorized dealer/workshop) on 31.03.2016 and handed over the vehicle in question to him for repair and in this regard defendant No. 1 issued a receipt (Exh.P3). He also stated that the vehicle in question remained in the possession of defendant No.1 for about 45 days and in this period he visited the defendant No.1 time and again but the defendant No. 1 failed to complete the work of repair of the fuel pump or to replace the same, for which he claimed his loss of business @ Rs.3000/- per day, in total Rs.135000/- for 45 days (in paragraph No. 3 of his petition, since not included in the amount of claim mentioned in the head note).

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2. Feeling aggrieved by the after sale service provided by the defendants and the quality of the material used for manufacturing the vehicle in question, he issued legal notices Mark-A(to defendant No.1) and Mark-B (to defendants No.2&3) on 26.04.2018, dispatched through the postal service vide receipts Mark-C to Mark-D, whereby he demanded the replacement of the vehicle in question alongwith payment of damages @ Rs.500000/- .

3. Since the notices Mark-A issued to defendant No. 1 and Mark-B issued to defendants No. 2 and 3, were not responded by them, therefore, the petitioner brought his claim through institution of his original petition on 21.05.2016.

4. The defendants were summoned in the same, who appeared and contested the case by filing their written statements whereby they categorically denied the allegations and also raised some legal objections.

5. Thereafter, when the case was at the stage of evidence the claimant, he brought an application seeking amendment in his main petition for correction of the head note of the same for the addition of the remaining price of the vehicle Rs. 172000/- paid by him as advance apart from the amount of loan provided by the Bank of Punjab. The application was contested by the defendants but was allowed and his amended petition was filed on 08.04.2017 whereby the total price of the vehicle in question was mentioned as Rs. 712000/- and the amount of damages Rs. 500000/- while the total claim @ Rs. 1212000/- mentioned in the head note of the same (again Rs. 135000/- mentioned in paragraph No. 3 of the amended petition as his loss of business for 45 days not included in the claim mentioned in the head note). The same was also responded by the defendants through filing their contesting written statements.

6. The claimant was directed to produce his evidence, Therefore, he himself appeared as Pw-1 and examined two witnesses namely Rana Muhammad Ayyub and Muhammad Sarwar as Pw-2 and Pw-3. He also produced documentary evidence consisting of three affidavits of all the three Pws alongwith his other documents i.e. legal notices to the defendants Mark-A and Mark-B, receipts of post office as Mark-C to Mark-E, receipt issued by the defendant No.1 for parking the vehicle in its workshop, dated 31.03.2016 as Exh-P3, receipt (quotation) regarding repair of fuel pump as Exh-P4, receipt (quotation) of Tool Kit as Exh-P5, Bank Statements (Bank of Punjab for payment of loan) as Exh-P6, Exh-

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P6/1, copy of Registration Book Mark-F, Authority letter issued by the Bank in favour of the claimant, Mark-G and Acknowledgement Due Mark-H received from defendant No. 2 and closed his evidence.

7. In rebuttal defendants examined Abdul Sattar Mughal Service Manager of the Defendant No.1 as Dw-1 who produced his affidavit Exh-D3, Delivery Letter Exh-D4, attested copy of Registration Book Exh.D-5, Documentary Check List Exh.D6 and Acceptance of Delivery Exh.P7 (under objection) and also examined Imran Hassan Deputy Manager After Sales, Suzuki Motors Company Ltd. Area Office Lahore as Dw-2 who produced his Affidavit as Exh.D8 and his Authority Letter Exh-D8/1. Exh-D1 is Satisfaction Note dated 07.05.2016 related to the office of the defendant No. 1 as a service provider/workshop and signed by Fakhar ul Zaman petitioner as customer on 13.05.2016 while Exh-D2 is Job Card No. 18460 dated 07.04.2016 signed by Fakhar ul Zaman petitioner (both confronted to Fakhar ul Zaman Pw-1 and Exhibited during his cross examination when he admitted the same).

8. Arguments have been heard and record perused.

9. Learned counsel for the claimant/petitioner has argued that the transaction of the sale of vehicle/pickup namely Suzuki Ravi in question, is admitted. He further argued that the manufacturing defect of the fuel pump of the same alongwith the fact of parking of the vehicle in question in the garage of the defendant No.1 for the period of 45 days, is also admitted. He also argued that the petitioner has successfully proved the fact that his vehicle in question was rented with Rana Muhammad Ayyub contractor Pw-2 on daily basis for the fare @ Rs.3000/- , therefore, the loss of his business @ Rs. 135000/- has also been proved. He also added that the material used for the manufacturing of the vehicle in question is substandard rather all the vehicles manufactured by the Suzuki Company for the Self Employment Scheme are substandard, therefore, the petitioner deserves for the relief of its replacement by a new one, other than the one manufactured for the "Apna Rozgar Scheme". In support of this contention he relied upon a judgment of Honourable Lahore High Court, Lahore reported as PLD 2012 Lahore 264. He concluded by arguing that the petitioner has suffered from the mental tension, caused by the conduct of the defendants, therefore, he is also entitled for the damages as prayed for.

10. On the other hand learned counsel for the defendants has argued that the claimant does not fall within the definition of the

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Consumer as provided in Section 2 (c) of the Punjab Consumer Protection Act, 2005 because he purchased and used the pickup in question for the commercial purpose instead of his own use. He further argued that though the defect of fuel pump of the vehicle was a manufacturing defect but the same was successfully rectified by the defendant No.1 through its replacement to the satisfaction of the claimant as being transpired from the satisfaction note Exh-D1 which creates an estoppel against his right to sue and even otherwise the liability regarding the said defect is covered under Section 9(1) of the Punjab Consumer Protection Act, 2005 while section 10 of the Act ibid also protects the manufacturer from the liability of damages of the nature since demanded by the claimant. He further argued that the claimant cannot demand damages sought for, being restricted by Section 15 of the Act ibid. He further argued that the instant case is time barred because the alleged cause of action was accrued on 29.03.2016 when the alleged defect became in the knowledge of the petitioner but he instituted his case on 21.05.2016 which is clearly beyond the period of 30 days provided by Section 28 of the Punjab Consumer Protection Act, 2005 while no condonation for the delay in question has been sought for. He finally argued that the claimant does not come to the court with clean hands as he violated the terms of the Scheme through which he got the vehicle in question. The same was an employment scheme introduced by the Government of the Punjab for unemployed graduate workers to provide them a job as self employed but as per his own statement dated 10.06.2017 as Pw-1 Fakhar ul Zaman claimant has admitted that he is employed as Dispatch Incharge in Vision Food and Packages Factory, Sundar Industrial Estate, Lahore from previous six months while the pickup in question has been leased out to Rana Muhammad Ayyub contractor Pw-2 from the very beginning of its purchase as the same was delivered to the claimant on 15.03.2016 and this fact has been admitted by Pw-2 also. In support of his contentions, he referred the case law reported as PLD 2014 Lahore 196 and 2017 CLD 1196.

11. I have considered the contention of both the sides in the light of record and law on the subject.

12. Admittedly, the defect of fuel pump in question, was rectified by the defendants to the satisfaction of the claimant, which fact has been admitted by him through his satisfaction note Exh-D1 which is admittedly signed by him, therefore, it can be safely held that the claimant is estopped to bring his instant claim/complaint against the defendants. Exh-

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D2 is a Job Note signed by Fakhar ul Zaman claimant showing that the alleged manufacturing defect was removed free of cost.

13. As for as the grievance of the petitioner that the vehicle sold/delivered to him was manufactured with substandard material, there is no evidence to prove this fact. It is also an admitted fact that after the removal of the defect of the Fuel Pump with reference to Exh-D1 and D2, in the month of May 2016, the claimant never complained for any other defect, either during the period of warranty or thereafter, meaning there by that the vehicle in question is doing its job very well.

14. It is also observed that after accruing the defect of the Fuel Pump on 29.03.2016 the claimant allegedly, issued a legal notices dated 26.04.2016 (Mark-A and B) and then instituted complaint/petition in this court on 21.05.2016, which is beyond the period of 30 days limitation provided by Section 28 of the Punjab Consumer Protection Act, 2005 while the claimant has not opted to seek condonation of delay in question, therefore, his instant petition/complaint is barred by time.

15. As a nutshell of the above discussion, it is held that the petitioner has failed to prove his claim against the defendants and his case is devoid by merits, therefore, he deserved no relief. Consequently his instant claim/petition is hereby dismissed with no order as to costs. File of the case be consigned to record room after its due compilation.

Announced
22.03.2018


**Presiding Officer,
District Consumer Court,
Sargodha.**

Certified that this order consisted upon 05 pages, which have been dictated, corrected and signed by me.


**Presiding Officer,
District Consumer Court,
Sargodha.**