

**IN THE COURT OF PERVEZ IQBAL SIPRA,
DISTRICT & SESSIONS JUDGE / PRESIDING OFFICER,
DISTRICT CONSUMER COURT,
FAISALABAD.**

Complaint No 331/2016
Date of institution 23.08.2016
Date of decision 11.09.2017.

Faqeer Ullah S/o Barket Ullah R/o Chak No.58 JB Lahlan,
Faisalabad.

Versus

Arshad, Proprietor Arshad Motor Store Partab Nagar, Jhang Road,
Opposite Total Petrol Pump near Sardar Kafey Furniture Bazar,
Faisalabad.

Claim u/s 25 the Punjab Consumers Protection Act, 2005.

ORDER:

By filing this complaint, the claimant has contended that on 01.08.2016, for his Mazda vehicle, he purchased front excel and rear excel from the defendant for Rs.80,000/- and at the time, Muhammad Rasheed and Imran Ali were with him. He asked the defendant to sell him simple excels but he handed over him electronic excels. He took excels to Ehsan Kharadia who after alteration, was to fix the same in his vehicle. Ehsan Kharadia told him that the excels were electronic. He contacted with the defendant and asked him that he handed over him electronic excels while he paid for simple excels thereby the product sold to him was defective and he should exchange the same by simple. The defendant did not give him hear and denied to redress his grievance and also advanced abuses. He then gave notice u/s 28 (1) of the Punjab Consumer Protection Act, 2005, to the defendant but of no avail, hence, the instant complaint.

2. The defendant contested the complaint by filing written statement. He has contended that he does the business of used parts of vehicles. The claimant himself examined and then

purchased the excels in question and it was not at that time discussed or settled that the excels would be simple or electronic. He is not manufacturer of the product and the used excels were sold. When the vehicle parts come to his shop, remain in the same condition and no one interferes thereto. The excels in question after appropriate examination were purchased by the claimant at his own but lateron, he changed his mind and asked for exchange which was not possible for him. The complaint in hand was not maintainable, therefore, it may be dismissed.

3. At pre-trial stage, none of the parties offered for settlement and then the evidence of both the parties was recorded.

4. Arguments heard, record perused

5. The claimant entered into the witness box as PW1 and submitted his affidavit Ex-P1. He also tendered the receipt of TCS thereby the notice (the copy of which is on file Mark P/A) was statedly sent to the defendant. The receipt regarding the sale of excels is Ex-P3. It shows that two excels (front and rear) of Hino vehicle were purchased by the claimant. It is not mentioned in the receipt that the excels were electronic or simple. In his cross-examination, the claimant stated that the excels were taken to Ehsan Kharadia who after opening the same told him that the same were electronic. He also told that the simple excels are always better than electronic excels. This very version of the claimant leads to interfere that when Ehsan Kharadia told him that the simple excels were better than electronic excels, he changed his mind and decided to get fixed simple excels in his vehicle while the excels purchased

from the defendant were electronic. At the time of purchasing the excels, Muhammad Rasheed and Imran Ali were with him and they could to be best witnesses helpful for the court to know whether there was any agreement that the excels would be simple or electronic but these witnesses have not been brought to the court. Imran Ali who is a mechanic of vehicles is the resident of Ghulam Muhammad Abad and as such being the resident of Faisalabad might easily be brought to the court but the claimant did not attempt for it. It is a well settled principle of law that the best available evidence if is with held, leads to a presumption that if produced, would go against the interest of the party who with holds such evidence. So, it may safely be inferred that Imran Ali if were examined, would have not supported the claimant's version. The second relevant witness was Ehsan Kharadia. The claimant asked him to fix the excels after alteration or in other words, he has discussed with him about the fixing and alteration of excels in his vehicle. Although, the claimant has not mentioned anywhere that Ehsan Kharadia asked him for simple excels, yet he might while appearing before the court, depose about his advice to the claimant. The claimant alongwith an expert went at the shop of the defendant and after appropriate examination, purchased the product. The product was taken to the workshop of Ehsan Kharadia. Ehsan Kharadia checked the product and observed that the excels were electronic. He told the claimant that the simple excels are always better than electronic excels. The electronic excels may also be fitted in the vehicle and nothing has been mentioned that there was any problem that the electronic excels did not work. The claimant

was told by Ehsan Kharadia that the simple excels were better and he intending to get the same exchanged by simple one, again went to the shop of the defendant and all it happened and was done by the claimant to satisfy his wish. The defendant does not appear at fault by any strength of imagination. He does the business of used parts of vehicles and such parts are mostly imported. In which condition the parts are brought to the shop of the defendant, he sells in the same condition to the customers. No warranty of such parts is given. Even it is observed that such parts are not washed and swept by the shopkeeper. In what condition, the excels in question came at the shop of the defendant, he sold in the same condition and nothing proves that the claimant ever asked for simple excels and electronic excels were handed over to him. No warranty was given by the defendant and even nothing was settled in between the parties at the time of transaction about the construction and composition of the product. In the given circumstances, it may not be held that the defendant sold defective product or the product sold by him to the claimant was of different composition and construction.

6. For what has been discussed above, the claimant's claim does not prove thereby the complaint in hand is dismissed. After due completion, the file be consigned to the record room.

Announced
11.09.2017

(Pervez Iqbal Sipra)
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad.

Certified that this order consists of four pages and each page has been dictated, read, corrected and signed by me.

Dated
11.09.2017

Presiding Officer,
District Consumer Court, Faisalabad.

Short order

Present:-

Learned counsels for the parties.

ORDER

Arguments heard, record perused.

2. Vide order dated even passed in English separately, the complaint in hand is dismissed. After due completion, the file be consigned to the record room.

Announced
11.09.2017

(Pervez Iqbal Sipra)
District & Sessions Judge/
Presiding Officer,
District Consumer Court, Faisalabad.