

**IN THE COURT OF MUHAMMAD KALEEM SHEIKH,
PRESIDING OFFICER / DISTRICT & SESSION JUDGE,
DISTRICT CONSUMER COURT, FAISALABAD.**

Claim No:	372/DCC-2008.
Date of Institution of Claim	29.10.2008.
Date of decision	20.12.2008.

MUHAMMAD AWAIS FARRUKH

Vs.

GENERAL MANAGER, NESTLE PAKISTAN LIMITED.

CLAIM FOR RECOVERY OF DAMAGES /COMPENSATION Rs.1500,000/-

U/S.13 OF PUNJAB CONSUMER PROTECTION ACT,2005.

ORDER:-

1. Briefly, stated the facts discerning this case are that the claimant purchased three packets of Every Day Nestle Dry Milk from Mohsin General Store, Jaranwala Road, Dhuddi Wala, Faisalabad of the weight 1000gms each on 11.10.2008. The claimant opened one of such packets so as to utilize it for his family members but on use of such product, they felling ill as such product was substandard, hence, the claimant had to incur heavy expenses from his pocket for treatment of his children. The claimant lodged regular complaint to the office of the company at Faisalabad under complaint code No.82231581 APD but in vain. After issuance of legal notice to the General Manager of the company, the claimant has lodged this claim before this court for recovery of actual price of the milk along-with damages of Rs._1500,000/- from the defendant's company.

2. The defendants vehemently opposed the above said claim by filing their written statement with the contentions that the claimant has not provided Medical Certificate that his family members suffered from any type of disease causing with usage and in-take of alleged purchased packet of Every Day Nestle Dry Milk, but in Para No.3 on facts, the defendants admitted that one open packet of Every Day Nestle Dry Milk 100gms bearing Batch Code No. 82231581 AP having expiry date of June, 2009 was submitted / furnished by the claimant with the Faisalabad Regional Sales Office of the defendant's company on 15.10.2008 on which the replacement packet of 1000gms of Every Day Dairy Whitener for tea was immediately given to the claimant.

3. In corroboration of his claim, the claimant has got recorded his statement on Oath today showing that he purchased three packets of 1000gms each

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of Every Day Nestle Dry Milk on 11.10.2008 for consideration of Rs.900/- from the shop of Muhammad Imtiaz, proprietor of Mohsin General Store of the locality Jaranwala Road, Dhuddi Wala, Faisalabad but that when one of such packets was opened its colour, taste and smell were not compatible with the actual and genuine standard milk as manufactured by the company that, therefore, he went to the defendant's office after half an hour where the receptionist got the sample from the milk packet and after checking it on dissolving in a cup of water, the packet of Every Day Nestle Dry Milk was replaced to him. Muhammad Imtiaz, proprietor of Mohsin General Store, Faisalabad also present in the court has admitted that the claimant purchased three packets Every Day Nestle Dry Milk from his shop on 11.10.2008 but that as the packets were sealed by the company, therefore, he delivered the same to the claimant as such. The learned counsel for the defendants has invited my attention to the Analysis report at page No.53 of the case file with contradictory remarks that there was no dissolving and taste issue observed in this reference issued but they could not comment about its taste which is approbatic-rapprobatic as the defendants could not be allowed to blow hot and cold in the same breath.

4. From the recital in the claim as well as facts readily available and ascertainable without recording evidence it is clear that defendants are responsible for providing to the consumer / claimant faulty and defective milk pack, the "defect" in the "Act" having widest amplitude pertaining to goods for the purpose of this statute as this definition is couched in the widest horizon of there being any fault, imperfection or short coming casting its net so wide so to bring it with its import any deviation from the requirements spelled out in the definition related to quality, quantity, potency, purity or standard of goods. Hence, the definition of "defect" is intended by the legislature to be cast in the widest terms and consequently has to be liberally construed as in this case.

5. Seen on factual and legal planes, it has been established to my entire satisfaction that the defendants despite being a multi national company is found negligent in providing the defective product of milk to the claimant. Any how, such defective product did not cause any injury to the life of consumer or his family members as there is no evidence in this regard. As a dangerous defect in the product was discovered prior to its causing injury or damage to the claimant, the damages are not recoverable from the opposite party U/S. 10 of Punjab Consumer Protection act, 2005 hereby reproduced for ready reference:-

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“Where the consumer has not suffered any damage from the product except the loss of utility, the manufacturer shall not be liable for any damages except a return of the consideration or a part thereof and the costs”

6. From the above scenario, the claim is hereby accepted as the defendants shall now pay cost of Rs.30,000/- due to deficiencies in the product of milk provided to the claimant / consumer and they shall pay further amount of Rs.20,000/- to him as legal expenses incurred by the claimant. The defendants shall pay the above said amount to the claimant within a period of thirty days; otherwise, they shall be dealt with U/S.32 (2) of the Punjab Consumer Protection Act, 2005. With these observations file be consigned to the record room after its due completion.

Announced
20.12.2008

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of three pages, dictated, signed and corrected by me.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad.