

**IN THE COURT OF JUDGE ABDUL HAFEEZ
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER
DISTRICT CONSUMER COURT, RAWALPINDI
(Case No. 155 of 11.12.2017) amended**

- 1) Muhammad Sagheer Malik, S/O Muhammad Din.
- 2) Muhammad Talha Sagheer, S/O Muhammad Sagheer Malik.
- 3) Muhammad Tayyab Sagheer, S/O Muhammad Sagheer Malik.
- 4) Zainab Sagheer, D/O Muhammad Sagheer Malik.
- 5) Fatima Hijab, D/O Muhammad Sagheer Malik.
- 6) Saira Nazish, D/O Muhammad Butta.
- 7) Shazia Rafiq W/O Muhammad Sagheer Malik.
- 8) Munir Bilal, S/O Muhammad Munir.

All Resident of House NO. # J-15 Jinnah Street Lane no.#1
Muhallah Muslim Town service Road Rawalpindi.

(Complainants)

VERSUS

1. Pakistan International Air Line (PIA) Through its Regional Office the Mall Road, Rawalpindi
2. Customer Care Counter (PIA) new International Airport through its Manager Rawalpindi.

(Defendants)

**COMPLAINT UNDER SECTION 4 OF THE PUNJAB
CONSUMER PROTECTION ACT, 2005**

ORDER
08.01.2020

Briefly stated facts of the case are that the plaintiff NO. 2, 3 and 5 are minors and instituting the plaint against the defendants through their father/ plaintiff No. 1 who has no adverse interest as against the minors and the defendant No. 2 is

impleaded party in the plaint as per the order of the court;- that the plaintiffs purchased tickets of flight no. PK 761 dated 22-12-2016, and had to travel from Islamabad to Jeddah at 7AM for performing Umrah. (Copies of tickets are attached);- that when plaintiff arrived at Islamabad Airport after wearing EHRAM for proceeding to Saudi Arabia for performing Umrah, the plaintiff were informed by the defendant NO. 2 that the flight is delayed and the new scheduled time flight is 7 PM. The plaintiff come back to their homes and later on, made a telephonic call to the help line of Airline, from where the plaintiff again informed that the new scheduled time of the flight is 7PM. That when the plaintiff again reached at Islamabad Airport at about 4 PM, the plaintiffs were shocked when the plaintiff were informed that the flight had already been taken off at 3 PM, the plaintiff contacted the customer care counter/ defendant no. 2 and conveyed the entire situation but the representative of customer care counter / defendant no. 2 rudely behaved with the plaintiffs. The plaintiffs requested to the representative, defendant NO. 2 that since we are in EHRAM and according to Sharia we are not in position to change the EHRAM and requested to the representative / defendant NO. 2 to arrange the flight today but the representative / defendant NO. 2 told to the plaintiff that it is impossible for the customer care service provider / defendant NO. 2 to arrange the flight for the plaintiff today and if the plaintiff are interested to fly

today then they had to buy tickets of any other airline;- that upon the refusal of the defendant No. 2 the plaintiffs purchased the tickets of Saudi Airline which cost the plaintiffs another amount of Rs 75000/- per tickets, thereafter the plaintiffs went to perform the Umrah;- that due to the bad, non cooperative and humiliating attitude of the representative / Defendant No.2 above all the bad and defective service rendered by defendants, the plaintiffs not only suffered the financial loss rendered by defendants, but also bore the mental torture;- that as per policy of the Airline if the flight is delayed or any negligence is committed by the Airline, then the Airline, shall refund the whole amount of tickets;- that the plaintiffs visited the office of the defendant no.1 several times and requested the defendant NO. 1 to refund the amount of the tickets but the defendant No. 1 delayed the matter on one pretext or the other while assuring to the plaintiffs that the amount of tickets will be refunded as the office/ defendant No. 1, is in correspondence with high up or the Airline and after the approval of the High up the amount of tickets will be refunded but on 15-11-2017, the defendant No.1 flatly refused to refund the amount of tickets;- that after so many visits to the office of the defendants and upon the refusal of the defendant No. 1 not to refund the amount of tickets, the plaintiffs sent legal notice to the defendants on 18-11-2017, through registered post but no reply has been given by the defendants;- that the plaintiffs visited the office of the defendants

number of times and requested to refund the amount of tickets but due to bad behavior of staff, the plaintiff also suffered mental torture, agony as well as loss of reputation, hence due to negligence and fault of the defective services render by the defendant, the plaintiff have a right to recover price of tickets along with Rs. 50,00,000/- as mental and liquidated damages caused due to mental torture, wastage of time, and loss to reputation as well as fee incurred on professional fee of lawyer;- that cause of action has accrued in favour of plaintiff against the defendant on 15-11-2017, when the defendants refused to refund the amount of tickets which is still continuing day by day;- that the plaintiffs are residing at Rawalpindi, cause of action also accrued at Rawalpindi and the offices of the defendants are also situated in Rawalpindi, hence this court has the jurisdiction to try the complaint;- that the prescribe court fee is fixed upon the complaint. lastly it is prayed that complaint may kindly be accepted and the defendant may kindly directed to refund the full price of tickets @Rs. 63000/- per ticket along with Rs. 50,00,000/- including mental torture reputation loss as well as lawyer fee, in the best interest of justice. Any other relief which this Honourable court deems fit and proper may also be granted.

2. On the contrary defendants filed their written statement, wherein they took various preliminary objections that as per statute namely "Carriage by Air Act 2012" shall prevail, which is

a central statute, whereas "The Punjab Consumer Protection Act 2005" is a provincial statute hence the complaint / claim is not maintainable and same is liable to be dismissed on this score alone;-that it is on record that the plaintiff has bought the ticket through a travel agent namely M/s world Link Rawalpindi. It is submitted with respect that the complainants have not arrayed the Travel agent as defendant in this case. It is pertinent to mention that the travel agent is a necessary party to the present proceedings. Therefore, the present suit is not maintainable as it is barred for non joinder / misjoinder of necessary parties;-that the complaint / claim under reply is also time barred, hence the same is liable to be dismissed;- that the alleged notice by the plaintiff is also time barred;- that the petitioners have not come to this Honourable court with clean hands, hence not entitled for any relief;- that the claim/ complaint is frivolous and vexatious in nature just to damage the reputation of the respondents hence the respondents are entitled for special and liquidated damages. He replied on facts para NO. 1, a needs no reply, para NO. 1 is correct, however, it is submitted that the plaintiff purchased tickets through Travel Agent M/s world Link Rawalpindi which is not party to the present proceedings, hence the present complaint is liable to be dismissed. Para no. 2 is incorrect as stated hence, denied. In fact on 21-12-2016, at 2221 hrs to 2242hrs PIA call center Karachi tried to call the plaintiffs/ passengers about the delay on the listed

contact number i.e. 0515792540. This contact number is available in the booking record of complainants, which either was provided by them or put in by their travel agent. It is submitted that this number remained inaccessible / unattended by their side, resultantly the plaintiffs/ passengers could not be informed about the delay departure of PK761 22-12-2016 ETD 1405 Lt. , details of the same are hereunder:-

PAX	PNR	TKT#	REMARKS
Bilal Munir	VCVJTQ	2149178872367	Called At 2221 HRS ycsr Code 43HZ
Fatima Hijab	WUTIXF	2149178872370	Called at 2242 HRS by CSR code 43HZ
Shazia Rafiq		2149178872369	
Zainab Sagheer	CVHSNV	2149178872372	Called at 2231 HRS by CSR Code 43HZ
Mohammad Malik		2149178872368	
Mohammad Talha		2149178872374	
Mohammad Tayyab		2149178872373	
Szaira Nazish		2149178872371	

Para No. 3 is incorrect as stated hence denied. As per flight record, scheduled departure of the flight PK761 was at 0700HRS in the morning on 22-12-2016. The flight 761 was rescheduled to expected late arrival of aircraft and departed 0850 HRS behind schedule at 1555 hours. Flight operated with full load of 358 pax in economy and 33 pax in business class including chance passengers. Had there been any miscommunication on part of PIAC, the whole

flight would have been miss-handled and operated under load. Para no. 4 is incorrect as stated hence, denied. Had the plaintiffs/ passengers provided their correct or accessible contact numbers / cell numbers to their said travel agent, they must have got the information from the PIAC/ respondents about the delay of flight on those numbers, so it was their fault for having failed in providing their correct accessible contact numbers. Para No. 5 is incorrect as stated hence, denied. The detail reply have already given in preceding paras which may also be read as integral part of this para. Para No. 6 is correct, but in the instant matter there is not any negligence on the part of respondents. However the tickets purchased from the travel agent are refundable by the airline through the travel agent subject to refund policy. Para No. 7 is incorrect as stated hence, denied. Para No. 8 is also incorrect as stated hence, denied. Para No. 9 is also incorrect as stated hence, denied. As already stated in the above para that the tickets purchased from the travel agent are refundable by the airline through the travel agent subject to refund policy. Therefore, the question of refund directly from the respondents does not arise at all. Furthermore the story narrated is bundle of the lies. There was neither any negligence nor any fault of defective service on the part of respondents hence (in the light of replies given in preceding, paras which may also be read as integral part of this para) there is no force in the claim by the plaintiffs however, the

respondents are entitled to recover Rs. 8000000/- as special and liquidated damages caused due to false and vexatious claim by the plaintiffs and damaging the repute of the respondents. Para No. 10 is incorrect hence, denied. The plaintiffs have no cause of action against the respondents. Para NO. 11 is legal. Para No. 12 is also legal. Lastly it is prayed that the claim/ complaint may kindly be dismissed and respondents be awarded special and liquidated damages in the interest of justice.

3. In order to prove his case against the defendants complainant No.1 Muhammad Sagheer Malik appeared as PW-1, he submitted documents i.e. his statement on affidavit Exh-PA, special power of attorney of complainants No. 4, 6 to 8, Exh-PB/1-2, copy of legal notice Mark-PA/1-2, Mark-PB/, M&P courier receipt Exh-PC, reservation details of PIA Exh-PD/1-8, legal fee certificate Exh-PE, copy of legal notice Mark-P-PB, postal receipt Exh-PF, Manager consignment tracking receipt Exh-PG.

4. On the contrary from defendant's side Mr. Khalid Mehmood Khan Ticket Manager of PIAC, was examined as DW-1, he submitted documents i.e. letter of authority Exh-DA, resolution passed by PIAC Board Exh-DB, his statement on affidavit Exh-DC/1, Passengers names record detail of Munir Bilal Exh- DD/1-2, passenger name record details of Hijab Fatima and Shazia Rafique Exh-DE/1-10, passenger name record details, passenger name record of Muhammad Talha Sagheer, Muhammad Tayyab

Sagheer, Zanib Sagheer Nazish Saira Malik Muhammad Sagheer
Exh-DF/1-14, copy of view single DPR about flight NO. PK-761 dated
22-12-2016, Islamabad to Jeddah Mark-DA/1-3.

5. The learned counsel for all the eight complainants contended that the complainants purchased tickets of flight No. PK761 dated 22.12.2016 to travel from Islamabad to Jeddah at 07:00 AM for performing Umrah, when they reached at Airport they were told by the defendant No.2 that flight has delayed and new scheduled time of flight is 07:00 PM, the complainants returned to home and later on made telephone call to helpline of the airline, from where the complainants again informed that new flight time is 07:00 PM. At 04:00 PM complainants reached the airport and came to know that flight has departed at 03:00 PM, the complainant told the whole situation to the representative of defendant No.2 and also told him that they are in Ehram, so they should arrange some other flight, but they refused and asked the complainants to get arrange ticket of some other airline, at this complainants purchased the tickets of Saudi Airline in consideration of Rs. 75000/- per ticket and went to perform Umrah. He further contended that as per policy of the airline, if flight is delayed or any negligence is committed by the airline, the airline refunds the amounts of tickets, the said fact is admitted by the DW-1 in his cross examination, the said fact is further strengthened through tickets Exh-PD/1-8 on these tickets, it is mentioned by the representative of defendants that

cancellation charges NIL, so the defendants were liable to return the full price of the tickets to the complainants, they did not listen to the complainants, having no option complainants issued legal notice to the defendants, again defendants did not listen to the complainants, at this they filed the complaint, he further contended that in the written statement defendants took the preliminary objections that complaint is barred by time, the complaint is not maintainable in this court, due to the reason that as per Article 143 of the constitution of Islamic Republic of Pakistan 1973 the statute namely Carriage by Air Act, 2012 shall prevail which is central statute, whereas PCPA, 2005 is a Provincial statute, on the said preliminary objections of the defendants court heard the detail arguments and vide order dated 18.05.2019 decided that complaint is not barred by time and the complaint is maintainable in this court, said order still intact and not challenged by the defendants in the higher forum and has attained the finality. The complaint may be accepted and complainant may be directed to pay the amount of claims mentioned in the complaint.

6. On the other hand the contentions of the learned counsel for the defendants is that the complainants got booked the tickets from the travel agency and not from the defendants, Travel Agency is not party to the complaint, the travel agency did not transfer the amount to the defendants, the claim of the complainant if any becomes that becomes against the Travel

agency and not against the defendants. He further contended that the defendants in time contacted the complainants, the other passengers boarded on the flight, how the complainants could not board on the flight, they are mentioning wrong time of their arrival, he further contended that as per refund rules the refund could be made within 12 months, complainants did not apply for the refund of the amount if they have any claim for refund, Travel Agency has left the field, that was debtor of many other Airlines, sufficient surety of said agent was not given to their Association, no amount has been received to the defendants from him, the defendants are not liable to refund the price of tickets, moreover the complaint is barred by time and is not maintainable in the light of Carriage By Air Act, 2012, the complaint may be dismissed.

7. Arguments heard, record perused.

8. The perusal of the record shows that in order to prove the case against the defendants Muhammad Sagheer Malik complainant No.1 himself and as well as on behalf of complainants No. 2 ,3 & 5 as their next friend and on behalf of complainants No.4, 6 to 8 as their special attorney appeared as PW-1, beside the other documents he submitted his statement on affidavit Exh-PA, in it he reiterated the facts mentioned in the complaint, he also produced special power of attorney executed in his favour by the said complainants. His cross examination shows that he deposed that it is correct that complainants did not purchase the tickets

direct from PIA booking office, but they purchased the tickets from the agent, he admitted that the process of refund is completed through the agent, he did not move any application for it to the agent, he volunteered and deposed that he has been visiting to him, as per his knowledge, FM Express Islamabad did not forward any application of complainants to defendants for refund, FM express Islamabad and MS world are not party to the complaint, he denied the suggestion that on 21.12.2016 at 02:00 pm telephonic call was made by the defendants on the number which was provided at the time of booking, he further denied that said call was pertaining to PNR No. VCVJTQ for Bilal etc and this was ticket No. 2149178872367 and code No. 43112 Code CSR, he further denied the suggestion that regarding PNR number WUTIXF of Fatima Hijab Shazia Rafique, Zainab, Sagheer Muhammad Malik they were also informed through telephonic call on 21.12.2016 at 10:31 night, he further denied that on 21.12.2016 at 10:31 night pertaining to PNR No. VHSNV Muhammad Talha, Muhammad Tayyab and Saira Nazish, defendants had been making, telephone call from Karachi to inform them that flight time has extended. In reply to question that the person present at customer care centre, who told the flight has delayed his name designation was written by you in the complaint and affidavit, he replied that when at 04:00 Am they reached at Airport, the person who was available on counter told that the flight has been delayed and it

will departure at 07:00 PM, he denied the suggestion that complainants did not make enquire from any person, he volunteered and deposed that after seeing the notice board of flight delayed they returned, he further deposed that on Mark-PA reference and date are not mentioned, on Exh-PC date 18.11.2017 is mentioned, Mark-PB was delivered on 02.05.2018, Mark-PA and Mark-PB are not signed by the complainants. It is correct that during the pendency of the complaint Mark-PB was delivered to defendant No.2, fee mentioned in Exh-PE was paid by him though cheque / cash, he denied the suggestions that complainant themselves presume the time of delay of flight 07:00 PM, he denied the suggestion that complainant did not suffer any loss due to the defendant's.

On the other hand Khalid Mehmood Khan ticket officer, Office manager PIAC was examined as DW-1, beside the other documents he produced his statement on affidavit Exh-DC, in it, he reiterated the facts mentioned in the complaint, his cross examination shows that he deposed that written statement was not prepared upon his instruction nor it bears his signatures, it is not in his knowledge that previously defendants moved an application for rejection of the complaint on the ground of lack of jurisdiction of this court and the same was dismissed on 18.05.2019, the defendants did not file any appeal against the said order in the high court, different dates are motioned on Exh-DD/1-12 Exh –

DE/1-10 and Exh-DF/1-14. On 21.12.2016, after 10:21 PM to 10:42 PM they did not contact with the complainants for informing them about the delay of the flight, when the flight is delayed, passengers are informed on their given numbers about it, he has not produced any record which shows that they informed the defendants and other passengers about the delay of the flight, defendant did not institute any suit against FM Express and logistic travel for the recovery of their amount from them, he volunteered and deposed that it is between agent and PIA and it continues in this way, if any passengers contact prior to the flight time for cancellation of his ticket, then he is informed about the cancellation charges according to that time, he do not remember if a passenger misses the flight PIA deduct Rs. 10000/- and return the remaining amount to him and in case there is a fault of PIA then the amount is not received, he admitted that on Exh-PD/1-/8 cancellation charges NIL are shown, he denied that this is due to the reason that there was a fault of PIA, he volunteered and deposed it was due to delay of the flight, he denied that the amount of complainants is still with them, he volunteered and deposed that the amount is with the agent who has defaulted as agent, given the surety, he volunteered and deposed that it is given by him to all the airlines, in it there is a very little share of the PIA, the security of IATA is about 7 million rupees and agents are members of IATA.

The above said evidence shows that sale and purchase of the tickets of defendants through agents by the complainants are admitted by the parties. It is also admitted by the parties that seats of the complainants in the Aeroplane of defendant No.1 were confirmed for 22.12.2016 at 07:00 AM, it is also admitted between the parties that when complainants arrived at airport at that time the flight time was extended, the contention of the learned counsel for the complainants is that the extended time of flight which was told to the complainant was 07:00 PM, but when complainants reached at the airport at 04:00 PM the flight had already taken off at 03:00 PM, the defendants did not inform to the complainants on telephone number which was given by the complainants to the defendants that new flight time is 03:00 PM. The evidence shows that the defendants did not produce any document showing that they through SMS or telephonic call informed the complainants about the extended time of the said flight. On the other hand the complainant has produced the tickets Exh-PD/1-8, on the said tickets regarding the cancellation charges word NIL is mentioned, the DW-1 in his cross examination has also admitted that if there is a fault of PIA then no amount is charged / received, so in absence of no cancellation charges mentioned on the tickets of the complainants it can be safely concluded that there was no fault on the part of complainants and the PIA was at fault that's why the concerned PIAC service

center Airport Islamabad mentioned on the ticket cancellation charges NIL.

The contention of the learned counsel for the defendants is that the amount of the complainants was not transferred to the defendants by the travel agent, the said amount is payable by the travel agent to the complainants. Moreover, complainants did not make any claim through his agent to the defendants, therefore, complainants are not entitled to receive the refund of said amount. Since the travel agent had sold the tickets being the agent of the defendants, defendants being principal, confirmed the said tickets for said date and time and issued in the name of the complainants, and the DW-1 has also admitted that defendants did not file any case against the travel agent for the recovery of price of the tickets as it is a matter between the agent and PIAC, therefore, in view of the above said and as well as this, that no one is allowed to say eat the cake and keep the cake so, I find no force in the said contention of the learned counsel for the defendants that the said amount is receivable by the complainants from the travel agent and not from the defendants, therefore, same is hereby turned down and it is concluded that the defendants by issuing the confirmed tickets for 22.12.2016 at 07:00 AM and by the receiving the consideration money of tickets which was paid by the complainants to their agent failed to inform the complainants about the delayed time of the flight and failed to full

fill their obligations to words complainants. Moreover, the defendant's staff present on service counter BBI Airport, Islamabad mentioned on the tickets that cancellation charges are NIL therefore, it is held that complainant has successfully proved that defendants provided defective services to the complainants and without any fault on their part the complainants refused to refund the amount of the tickets to them.

So far the contentions of the learned counsel for the defendants that complaint is time barred and liable to be dismissed and the complaint in presence of Carriage by Air Act, 2012 which is central statute, whereas as PCPA, 2005 is a provincial institute and under Article 143 of the Constitution of Islamic Republic of Pakistan, 1973 is not maintainable in this court and liable to be dismissed are concerned, in the light of the reply of learned counsel for the complainants to the said contentions. I have gone through order dated 18.05.2019, the said order shows that through the said application of the defendants under order 7 rule 11 CPC read with 151 CPC, containing said objections has been decided by this court against the defendants, the defendants did not challenge the said order in the higher forum and under the law said order has attained finality to the extent of said objections, therefore, in view of the above said I find no force in the said contentions of the learned counsel for the defendants that the complaint is barred by time and this court has no

jurisdiction to entertain and decide the complaint and same are hereby turned and it is concluded that complainants have successfully proved their complaint and same is hereby decided as under:-

The perusal of the complaint shows that the complainants had demanded refund of full price of ticket @ Rs. 63000/- per ticket. The perusal of the complaint further shows that that there are 8 complainants mentioned in the complaint, the perusal of the evidence shows that the complainants have produced 8-airtickets Exh-PD/1-8 and in this way Rs. 63000/- X 8 the amount which comes to Rs. 504000/-, the perusal of the said tickets shows that no cancellation charges are mentioned on the said tickets by the staff of the defendants, therefore, the said claim of the complainants is accepted to the extent of Rs. 504000/- and defendants are severally and jointly directed to pay Rs. 504000/- to the complainants.

The perusal of the complaint further shows that the complainants have demanded Rs. 500,00,00/- towards mental torture, reputation loss as well as lawyer's fee, the perusal of the evidence shows that the complainants did not produce any medical documentary evidence to prove that any mental torture caused to them, so this extent their claim being unproved is hereby denied. The complainants have also demanded the said amount towards reputation loss, the evidence shows that no evidence has

been produced by the complainants to prove the said reputation loss, therefore, the said claim of the complainants is also hereby denied. However, section 31(e) of PCPA, 2005 shows that it authorizes the court to direct the defendants to pay reasonable compensation to the complainants, since in this case as stated above also defendants have badly failed to perform their obligations, they gave defective airline services to the complainants in result the complainants failed to fly with the concerned flight and resultantly, they purchased 8-tickets each valuing Rs. 75000/- of Saudi Airlines and again spent Rs. 600,000/-, whereas the each ticket of PIA was of Rs. 63000/- and 8-tickets were total valuing Rs. 504000/- and in this way the complainants paid over and above Rs. 96000/- to the Saudi Airline due to defective service of the defendants to travel for Umrah. Moreover, during this process their time was also wasted, therefore the defendants are severally and jointly directed to pay Rs. 96000/- paid extra amount by the complainants to Saudi Airline alongwith Rs. 40000/- as compensation total Rs. 136000/- to the complainants in this respect. Moreover, Section 31 (g) of PCPA, 2005, authorizes court to award actual costs including lawyer's fee incurred on the legal proceedings, the perusal of the evidence shows that the complainant has produced certificate of payment of counsel fee Rs. 110000/- Exh-PE in the evidence. The said claim in my opinion is exorbitant, therefore, the said claim of the complainants is

accepted to the extent of Rs. 55000/- and remaining is hereby denied.

9. The upshot of the above said discussion is that the complaint of the complainants is hereby partly accepted and partly rejected and defendants are severally and jointly directed to pay Rs. 504000/- towards the refund of the amount of tickets which they received from the complainants, Rs. 136000/- towards compensation and Rs. 55000/- towards actual costs including lawyer's fee incurred on the legal proceedings total Rs. 695000/- to the complainants within 30-days of the passing of this order. File be consigned to the record room.

Announced:
08.01.2020

ABDUL HAFEEZ
District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi

It is certified that this order consists upon 20-pages.
Each page has been dictated, read, corrected and signed by me.

District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi