

**IN THE COURT OF MUHAMMAD SARFRAZ AKHTAR  
DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER,  
DISTRICT CONSUMER COURT MANDI BAHA-UD-DIN**

Case No.	12 of 2017
Date of institution	20.06.2017
Date of decision	11.01.2018

Muhammad Yousaf son of Muhammad Akram, caste Arain,  
Resident of Mohalla Gorha, Mandi Baha-ud-Din.

Vs.

Adnan Maher, Manager Mian Group of Chakwal, Opposite  
Cinema Ground, Mandi Baha-ud-Din.

**Present:** Claimant with Mirza Ateeq Yousaf Advocate.  
Defendant ex-parte.

Ex-parte evidence recorded. Arguments heard.

**ORDER:**

This claim under section 25 of the Punjab Consumer Protection Act, 2005 (hereinafter referred as the Act) has been brought by claimant Muhammad Yousaf maintaining therein that on 28.03.2016 he purchased 32" LED of Changhong Ruba on installments from the defendant "Mian Group of Chakwal" with warranty of two years; total price of the product was Rs.28,800/- and monthly installment was fixed @Rs.1920/- per month; there is no default in payment of installment and an amount of Rs. 24,960/- has already been paid; on 30.04.2017 the picture of LED disappeared and it was taken to the defendant who received the same and informed the claimant that there is a minor fault in back light of LED that would be got repaired in 2/3 days from the concerned company; on 13.05.2017 the defendant informed that the screen of LED is cracked that needs replacement for which the claimant would have to pay Rs. 14,500/-; the claimant protested that there was no crack in the screen of LED at the time when it was received by the defendant and had there been any crack that

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would not have been received by him; the defendant forced the claimant to purchase another LED on fresh installments and refused to get remove the defect in the earlier purchased product; that if there is any crack in screen of LED that has been caused after the same was received by the defendant that has nothing to do with the claimant; legal notice was served upon the defendant on 30.05.2017 and as the grievance of the claimant was not redressed instant complaint has been filed. Due to failure of the defendant to do the needful, the claimant suffered damage and loss. An amount of Rs. 500,000/- (five lacs) as compensation and damages has been claimed by the claimant on account of faulty and defective service of the defendant.

2. Defendant initially contested the claim by submitting his written statement wherein it was maintained that at the time when LED was received from the claimant it was dead and the claimant was told that in case the LED was damaged (broken panel) then there would be no warranty and with the consent of the claimant product was sent to Service Centre where it was found that the panel of LED was broken that does not fall in the warranty. It was further maintained in the written statement that the claimant should have availed remedy against the company and not against the defendant. However, during the proceedings at the time when the complaint was fixed for claimant's evidence, the defendant got absent and was proceeded against ex-parte on 28.11.2017.

3. Although Rule 14 (5) of the Punjab Consumer Protection Rules, 2009 empowers this Court to decide a claim ex-parte on the basis of documents available on record if defendant fails to appear on the day of hearing, yet, ex-parte evidence of the claimant has been recorded wherein he appeared in the witness box and produced his affidavit Ex.PA, Warranty Card as Ex.PB and detail of payment of installments as Ex.PC.

4. There is no dispute in between the adversaries with respect to date of purchase, price and warranty of the product. The

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only dispute as is evident from the written statement is regarding crack in the screen of LED that as per his assertion does not fall in warranty. Screen being crack is a fact that is noticeable even by an ordinary person. Had there been any crack on the screen at the time when it was handed over to the defendant by the claimant that must have been recorded and in such an eventuality there was no occasion for the defendant to receive the product for dispatch to the Service Centre due to violation of condition of warranty. But since the product was received by the defendant without observing or recording any fact regarding screen of LED being cracked and the same was dispatched to Service Centre now no such stance can be taken. As such, the objection of screen being cracked from the claimant cannot be given any credence. Obviously, in such an eventuality in case now the screen is cracked, that might have been cracked after the same was received by the defendant for sending it to Service Centre, therefore, any such subsequent damage has nothing to do with the claimant.

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5. The defendant has taken the objection in written statement that claim should have been filed against the company. When the product was purchased from the defendant, installments were being received by the defendant, product was also presented for warranty claim to the defendant who received the same for sending it to Service Centre, the objection taken in this respect is left with no force. The liability of the defendant in this respect on such ground cannot be avoided. It was the duty of defendant to provide defect free product and even if it became defective during warranty period then defendant was bound to either get it repaired or replace the same or receive it back and to return price thereof to claimant. The ground taken in the written statement in light of above discussion are not sufficient to avoid liability for defective product within the meanings of section 4 or for that matter to avoid liability for defective or faulty service within the meanings of section 13 of the Act *ibid*.

6. Complaint has been verified on oath. In addition thereto the claimant also appeared in the witness box as PW.1 and submitted his affidavit Ex.PA. There is no rebuttal on the record.

7. In view of the above there is no reason to refuse the claim in this case. At the same time it is relevant to see as to what extent relief can be accorded to claimant. Rs. 500,000/- (five lacs) has been demanded as compensation and damages for which there is no evidence on the record as to how this much compensation has been demanded. Needless to mention that wherever compensation or damages are demanded that must be appropriate and keeping in view facts and circumstances of transaction in question and product which was sold. Considering the facts of this case the appropriate compensation for claimant is Rs. 25,000/- (twenty five thousand) besides relief of repair of or provision of new LED or in alternative return of price of product.

8. Therefore, in terms of section 31 of the Act, I issue an order and direct defendant to take following actions within fifteen days from today:-

- a) To get repair LED or replace it with fault free new one of similar configuration or to return the total price of LED to the claimant as received by the defendant. In case LED is repaired or replaced, the claimant shall be bound to make payment of remaining installments.
- b) To pay Rs. 25,000/- (Twenty five thousand) as compensation to claimant for agony suffered by him due to conduct and behavior of defendant.

9. In case of failure to comply with the order, the defendant shall have to face the consequences mentioned in section 32(2) of the Act *ibid*. Copy of the order be provided to the claimant and also sent to the defendant in line with Rule 17 of the Punjab Consumer Protection Rules, 2009. The Registrar of this

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Court shall transmit copy of this order for the purpose of Rule 25 of the Rules ibid. Order accordingly. File be consigned.

Announced  
11.01.2018.



(Judge Muhammad Sarfraz Akhtar)

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din

Certified that this Order consists of five (05) pages and each page has been dictated, read, corrected and signed by me.

Dated: 11.01.2018

(Judge Muhammad Sarfraz Akhtar)

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din

Copy of Order Received by:

محمد يوسف



محمد يوسف  
11-01-18 Claimant