

**IN THE COURT OF CHOUDHARY MUHAMMAD YOUSAF AUJLA,
PRESIDING OFFICER/ADDITIONAL DISTRICT & SESSION JUDGE,
DISTRICT CONSUMER COURT, FAISALABAD.**

Claim No:	01/DCC-2007.
Date of Institution of Claim	26.05.2007.
Date of Amended Claim	31.07.2007.
Date of decision	30.01.2008.

NAJEEB-ULLAH GILL Vs. CHIEF EXECUTIVE FESCO etc.

CLAIM FOR RECOVERY OF LOSS, DAMAGES AND COMPENSATION
OF Rs. 14,8,381/-.

ORDER:-

1. The claim in hand was firstly filed on 26.05.2007 against the Chief Executive, ESCOTS Pakistan Limited, Lahore and the present defendants No.2 and 3 and it was 24.07.2007, when during preliminary arguments, it transpired that digital meter which was allegedly burnt, installed at the premises of the claimant was manufactured by PEL Pakistan Limited and not by the ESCOTS Pakistan Limited, at which the claimant with the permission of the court filed amended claim on 31.07.2007 by impleading the PEL Pakistan Limited as defendant No.1.

2. The claim has been made by the claimant that he is a consumer of electricity for tube well meant for agriculture purposes situated at chak No.245/J.B, Gill Zarree Farm, Tehsil & District Jhang and an electric connection was got sanctioned at the name of father of the claimant and is now in the use of claimant after the death of his father and the said connection is being run on a Multi Tariff Policy announced by the Government of the Punjab and Faisalabad Electricity Supply Company and at the option of the claimant, his electric connection was converted in the said policy and Digital Meter was installed manufactured by defendant No.1, i.e PEL company. The electric meter installed at the premises of the claimant was burnt on 12.02.2007 just after one month of its installation and the same was changed by the hectic efforts of the claimant by the defendant No.3 on 13.03.2007 after a period of

one month. Meanwhile, the crops of the claimant were badly damaged and his cattle were deprived of drinking water having only source of irrigation with the claimant the electric tube well. The claimant also had to suffer mental agony and financial loss due to stoppage of electricity supply, the loss suffered to the claimant was mentioned as under:-

I	Decrease in production of Wheat due to shortage of water in February 2007.	320 K.G per Acre X 29 Acres = 9280 K.G X RS.10.62= Rs 98,553/-
II	Loss of production due to delayed sowing of Maize.	300 K.G per Acre X 18 Acres = 5400 K.G X RS.11.25= Rs 60,750/-.
III	Damage of Shuftal / Fodder.	Rs. 50,000/-
IV	Traveling expenses in between Nia Lahore - Gojra – Faisalabad for one month	Rs. 35,000/-
V	Average Electricity Bill imposed by FESCO	RS. 15,478/-
VI	Compensation for mental disturbance and torture.	RS. 3,00,000/-
	Total	Rs. 5,59,781/-

3. Thereafter, a second incidence occurred on 12.04.2007 when the newly installed meter was again burnt and it was changed by the defendants but the claimant suffered the following loss:-

I	Damage of crop of Maize due to shortage of water.	400 K.G per Acre X 18 Acres = 7200 K.G X RS.11.25= Rs 81,000/-
II	Traveling expenses in between Nia Lahore - Gojra – Faisalabad for three days.	RS. 7,000/-
III	Cost of Digital Meter.	Rs. 5,600/-
IV	Compensation for mental disturbance and torture.	Rs. 7,00,000/-
	TOTAL	RS. 7,93,600/-
	Grand Total:	Rs. 13,53,381/-

4. The claimant suffered the above mentioned loss in the shape of decrease of production of Wheat, Maize, Shaftal, Fodder and also had to pay the cost of Digital Meter, Average Electricity bill and traveling expenses due to defective Electricity Meter, manufactured by defendant No.1 as the said meter was unable to bear a supply of heavy load, being a very sensitive that the above said

electricity meters were defective in its production and in design and were not manufactured by the defendant No.1 in accordance with proper technology, because the same were unable to bear the supply of heavy load of electric supply through it, and the effects of weather i.e direct sunlight, rain, storms, and cool winds etc being sensitive in nature, due to which two meters were burnt in a short period since February 2007 to April 2007, and it had become a permanent problem for the claimant and the other agricultural consumers that such defective meters manufactured by defendant no.1 were burnt repeatedly.

5. That the claimant had also established a cattle farm of one hundred thirty cattle, but by the stoppage of electricity due to burning of said digital meters, it has caused serious mental torture to the claimant, as it was not an easy job to provide water through ordinary source, to such numbers of cattle who were thirsty but the claimant was helpless to do something for them.

6. The claimant sent a Legal Notice to the defendants on 23.04.2007 and on 27.07.2007, but the said notices were not responded by the defendants and the claimant had no option but to file the claim in hand.

7. The claimant prayed for the return of the price of above said meter, the compensation to the claimant for loss caused due to above said defective product of defendant No.1 as detailed in claim amounting to Rs.2,90,303/-, the compensation for the mental disturbance and torture as detailed above amounting to Rs. 10,00,000/-, Rs. 50,000/- as lawyers fee and Rs. 5,000/- as cost of this legal proceedings.

8. The claim was hotly contested by the defendants No.1 and defendant No. 3 by filing separate written statements who agitated the maintainability of the claim, jurisdiction of the court, relationship of consumer and that of service provider and it was prayed for dismissal of the claim with costs.

9. The defendant No.1 contested that the meter can easily measure the load according to the rating specified on its nameplate and without being getting

damaged. The temperature raise of the meter was well within the specified limits of local as well as the international standards. However the user can not over load the meter than its specified voltage and current ratings mentioned in the meter and also sanctioned for the site. The electronic meters being manufactured now a days are much accurate than their earlier counter parts i.e Electromechanical Energy Meter. The accuracy class of the meters was better than before and tampering with these meters was much difficult compared to the Electromechanical Energy Meters. The burning of the meter twice at the same site usually referred to the apprehension that the claimant may have had made an attempt to tamper with electric meter.

10. The said meter also stands tested against the effects of rain, sunlight and other environmental influences specified in the standard provided by the WAPDA and IEC and the same were provided by the WAPDA / FESCO as per their purchase order and it was the responsibility of WAPDA / FESCO to install and monitor the electric meters at the premises of the consumers.

11. The defendant No. 3 also contested the claim vehemently that the claimant was not their registered consumer and the claim was barred by limitation and the claimant had also made additions in the claim beyond allowed amendments. On facts, the defendant No.3 alleged that Mr. Allah Ditta was their registered consumer and the defendant No.3 was not informed about the death of Mr. Allah Ditta. The sanctioned load of the claimant was 11KW, whereas he was using the same at 15KW and the claimant had installed his tube well motor at a long distance from the meter and the wire used for electric supply was also defective, due to which two electric meters of the defendants were damaged. The first meter became defective as its display was washed but the electric supply remained on and the tube well of the claimant also remained in running position. The claimant was served with number of notices to reduce

his load but he failed to comply with the direction of the defendants and the .
claimant had not suffered any loss, rather he had been stealing electricity.

There was no written statement filed by the defendant No.2 i.e Chief executive, FESCO.

From the divergent pleading of the parties, the following issues were framed:-

1. Whether the claimant has come to the court with un-clean hands and he has no direct terms of business with the defendant No.1? O.P.D.1.
2. Whether the claim in hand is barred by limitation? O.P.D.
3. Whether the electric meter installed by the defendants was defective in design? O.P.C.
4. Whether the electric meter installed by the defendant was burnt on 12.02.2007 and the same was changed on 13.03.2007 by the defendant No.3, due to which the crops of claimant were badly damaged and his cattle were deprived of drinking water and claimant also suffered mental and financial loss due to stoppage of electricity and he is entitled to get Rs. 5,59,781/- from the defendants as prayed for? O.P.C.
5. Whether the electric meter of the claimant was again burnt on 12.04.2007 and the claimant suffered a loss of Rs. 7,93,600/- and is entitled to recover the same from the defendants as prayed for? O.P.C.
6. Relief.

The claimant Najeeb-Ullah got examined with record to Mr. Muhammad Ishaq, Lower Division Clerk / Record Keeper of FESCO as PW1 who produced the following documents:-

Copy of application Najeeb-Ullah dated: 12.02.2007. Regarding Electric Meter as. Ex. P.1.

Copy of letter No.1285 dated:08.03.2007 regarding change of Electric Meter as. Ex. P.2

Copy of an application in request of information about Meter dated: 12.04.2007 submitted by Allah Ditta S/o Noor Muhammad as. Ex. P.3

Copy of Demand Notice No.1909 dated: 13.04.2007 as. Ex. P.4

Copy of Meter Change Order dated: 14.03.2007 as.Ex. P.5

An other Meter Change Order dated: 14.04.2007 as.Ex. P.6

Copy of Memo No. 3921 dated: 14.04.2007. Ex as. P.7

Copy of Memo No.4361-65 dated: 06.06.2007 as. Ex. P.8

Copy of approval dated: 13.03.2007 for change of Electric Meter as. Ex. P.9

Detailed list regarding the Electric Meters of PEL Company, Installation, Burnt, washed, defective and slow as. Ex. P.10

Copy of Detection Bill for the month of February 2007as. Ex. P.11.

The claimant Najeeb-Ullah himself appeared as PW.2 along-with his affidavit as witness Ex.P12 and got examined one Mr. Tahir Mehmood as PW.3 along-with his affidavit Ex.P13. The claimant also produced copy of the legal notice as Ex.P14, receipts of courier services as Ex.P15 to Ex.P21, copy of the legal notice at the name of the defendant No.1 as Ex.P22, receipt of post office Ex.P23 and original bill for the month of April 2007 as Ex.P24. In rebuttal the defendant No.3 examined Mr. Karam Rasool, Line Man-1 as DW.1 along-with his affidavit as DW.1/1, Shamas-ul-Haq, Meter Inspector, DW.2 along-with his affidavit as Ex.DW.2/1 and he himself appeared as DW.3 along-with affidavit as Ex.DW.3/1.

On behalf of the defendant No.1 his General Manager (IR&A) namely Colonel (R) Shoukat Mehmood Ghumman appeared as DW.1 along-with authority letter Ex. DW.1/1-1 and his affidavit as witness Ex. DW.1/1-2 and examined one Mr. Usman Gohar, Production Manager as DW.2 along-with his

affidavit Ex.DW.2-1. The defendant No.1 produced certificate of WAPDA as Ex.D.1, copy of design of meter as Ex.D.2, inspection certificate Ex.D.3, copy of letter PEL Company as Mark-A, copy of Abridged conditions as Mark-B.

I have given considerable thought to the arguments advanced at the bar and have gone through the record. My issue-wise findings are as under:-

ISSUE No.2

The onus to prove this issue was on the defendants. The defendants alleged that cause of action to the claimant accrued in February 2007, whereas the claim in hand was made in this court on 26.05.2007 and it was barred by time.

On the other hand, the perusal of file reveals that the claimant has filed the claim on two limbs of occurrences, i.e firstly burning of electric meter on 12.02.2007 and secondly on 12.04.2007 and there after he served the defendants with the legal notices requiring fifteen days time to redress his grievance and he came to this court with his claim on 26.05.2007 and the claim is found quite within time as stipulated by section 28 (4) of Punjab Consumer Protection Act, 2005. Issue is decided against the defendants.

ISSUES NO.4 and 5:-

Both these issues were to be proved by the claimant who himself appeared in the witness box as PW.2 and got examined one Tahir Mehmood as PW.3 and also got produced the relevant documents in his evidence by getting summoned the Record Keeper of the WAPDA / FESCO as PW.1.

In rebuttal the defendant No.1 examined his Attorney namely Mr. Shoukat Mehmood Ghumman as DW.1 and one Mr. Usman Gohar as DW.2 and it was the defendant No.3 who examined Mr. Karam Rasool as DW.1, Mr. Shamas-ul-Din as DW.2 and himself appeared as DW.3. All the witnesses tendered their evidence through affidavits duly scribed by them or, at their advice but signed and acknowledged by them.

The main claim of the claimant revolves around the burning of his electric meter on 12.02.2007 and its change on 13.02.2007 after a period of about one month and during this period, the claimant alleges that his electric supply to the tube well was off and the defendant No.3 contends that it remained on.

The scrutiny of evidence reveals that the claimant by way of an written application ExP-1 conveyed the defendant No.3 that his electric meter was burnt and its display was also blackish by smoke and the same be changed at which, site was checked by Mr. Shama-ul-Din, Dw.2 who reported that the supply was on and matter was washed but the claimant insisted that his electric supply of the tube well remained off during this period. It was alleged by the defendant No.3 in his statement as DW that electric supply of the claimant's tube well remained on but at the same time it stands admitted by the defendant No.3 and his DW's that site of the claimant's tube well was not checked or got checked after 17.02.2007 and one of the DW's also admitted that in such circumstances, the electric meters are burnt after some period when the display of such electric meters is washed earlier. The electric meter allegedly burnt on 12.02.2007, as per claimant and its washing of display only, as per defendant No.3, was not sent to the laboratory of the manufacturer i.e defendant No.1 to get it checked whether it was burnt or only the display was washed.

It was also alleged that the electric meters were burnt due to over-loading of 15KW instead of 11KW sanctioned load and a joint in the wire of the claimant and he sent a number of notices to the claimant but there was no such report / notice made by the defendant No.3 in respect of any such complaint of over-loading of electricity etc used by the claimant and use of defective cable or the use of electricity by the claimant at his residential premises, on the file. If such was a case, the defendants were obliged to take action against the consumer according to law for such violation, if any, made by the consumer as

envisaged by the ABRIDGED conditions of supply but not a single step was taken by the defendant No.3 against the claimant for any of such violation and it goes to show that the defendant No.3 has taken this version as after thought just to create a defense to their own omissions / irregularities in commissioning / restoring the connection to the tube well of the claimant for about one month which was the mature season for the Wheat crop and sowing season of the Maize.

Though the defendant No.3's witnesses M/S. Karam Rasool and Shamas-ul-Din while appearing as DW.1 and DW.2 have tried to shift their burden on the defendant No.1 i.e PEL Company Private Limited for providing defective and faulty meters but their statements are not in conformity with the statement of defendant No.3 Mr. Misbah-ul-Islam DW.3 who also defended the meter manufacturer i.e PEL Company. It is also there in the defendant's evidence that the site of meter of the claimant was not visited by the FESCO officials after 17.02.2007 to get know that whether the electric supply of the claimant's tube well was on or off. Whereas the claimant alleges that his electric supply to the tube well remained off after 12.02.2007 till the re-installation of new meter on 13.03.2007 and he has also proved the same by appearing as PW with his affidavit. Moreover no previous litigation or any kind of enmity was ever alleged by the defendant No.3 of the claimant with the FESCO officials, which may have prompted the claimant to file the claim in hand. So it was the conduct of the defendants No.2 and 3 to cause delay in the installation of electric meter for about one month. The defendant No.3 could not justify the delay of one month to change the electric meter that what forced the FESCO to delay the one month's period which could have been done within one or two days as happened on the next time when again on 13.04.2007 the electric meter of the claimant was burnt and it was changed within two days. The claimant of the case was burdened with the cost of the meter and an

average bill for the omission of the FESCO to re-install the meter for a period of one month, whereas admittedly the electric meters of defendant No.1 duly prepared as per WAPDA specifications were available with the WAPDA / FESCO, so the charging the claimant with the cost of electric meter and average bill was at all not warranted by law and facts and this act was quiet illegal on the part of the defendants No.2 and 3.

It is also in evidence that the defendant No.1 was providing the electric meter to the defendants No.2 and 3 as per their specifications which were also tested by the WAPDA subject to a test report and a period of eighteen months warranty was also furnished by the defendant No.1 to the WAPDA and in case of any loss to the electric meters, the same should have been sent for laboratory test to the PEL Company and for their substitution and not to be burdened the claimant of the case with the charges of the meter whereas the same was installed just one month prior to 12.02.2007 meaning thereby with the warranty period furnished by the defendant No.1.

The claimant was also charged with the price of electric meter Rs. 5,600/- by the defendants No.2 and 3, but there was no fault for the same of the claimant who was just running his electric appliances in good faith by the electric meter with one back-up meter installed at his premises which was never burnt.

It was alleged by the defendant No.3 that the claimant Najeeb-Ullah was not the consumer of the defendants but the same was Mr. Allah Ditta who has statedly expired and the claimant has not got changed the electricity tariff at his name. There is no denied by the defendants that the user of electricity at the premises is claimant after the death of his father and is regularly paying the bills and discharging all the legal liabilities and under the Punjab Consumer Protection Act, 2005, the claimant falls within the definition of the consumer.

The claimant of the case has though not furnished the documentary proof of his under-cultivation landed property and number of cattle at his premises

but there was no denial by the defendants to this fact that the claimant was cultivating the land with different crops of Wheat and Maize and had also cattle at his agriculture farm. The claimant in the absence of the supply of the electricity must have had suffered loss to the crops at his landed property, so having no detail of the same the claimant is entitled to recover the compensation in lieu of the damage caused to his crops and cattle which is granted to him of Rs. 50,000/- for the period of first one month and he is also entitled to recover Rs. 50,000/- as damages for the hardship, he suffered in perusing the matter before the defendants No.2 and 3 and before this court for the last about six months and for the mental agony and torture undergone by him.

The claimant has also claimed the damages for the burning of the electric meter for the read 12.04.2007 but he is not entitled to recover the same as this time, the meter was changed within two days by the FESCO officials by showing the efficiency which was also required on 12.02.2007 when the meter of the claimant went out of order and was not changed for whole of the month having no justification for the same and for this the defendants No.2 and 3 are liable to be burdened with the damages, costs and compensation towards the claimant.

The defendant No.2 the Chief Executive FESCO neither filed any written statement nor appeared himself to defend the case and even there was no power of Attorney with the defendant no.3 or with the learned counsel to appear on his behalf. Issues are decided accordingly.

ISSUE No.3

The onus probandi of this issue was on the claimant who to prove this issue got examined Mr. Muhammad Ishaque as PW.1 with the detailed list of electric meters of PEL Company installed, burnt, washed, defective and slow as Exp-10 which finds a detail of the defective meter of PEL Company Private

Limited but there is no evidence by the claimant on the file that these electric meters were not according to specification of WAPDA and the same were defective in production and in design. Issue is accordingly decided against the claimant.

ISSUE No.1

The claimant is the consumer of the WAPDA and neither he directly entered into any agreement with the PEL Company Private Limited nor he purchased the same from the PEL Company, so the claimant had no direct terms of business with the defendant No.1 but as the claimant suffered due to illegal act of the defendants No.2 and 3 so he had the cause of action and locus standi to file the claim. Issue is decided accordingly.

RELIEF:-

In view of my findings above, the claimant is entitled to recover from the defendants No.2 and 3, the cost of the meter Rs.5,600/-, paid average bill Rs.15,478/-, loss caused to his crops and cattle due to negligence of the defendants No.2 and 3, Rs. 50,000/- and the compensation of Rs.50,000/- Total amounting to Rs.1,21,078/- which shall be paid by them to the claimant within a period of one month, otherwise they would be dealt U/S. 32 (2) of Punjab Consumer Protection Act, 2005. The claim against the defendant No.1 is dismissed and is accepted against the defendants No.2 and 3. File be consigned.

Announced
30.01.2008

Ch. Muhammad Yousaf Aujla,
Presiding Officer/
Additional District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of 13 (Thirteen) pages, dictated, signed and corrected by me.

Presiding Officer.