

IN THE COURT OF MALIK KHIZAR HAYAT KHAN (DISTRICT & SESSIONS JUDGE)
PRESIDING OFFICER, DISTRICT CONSUMER COURT
SARGODHA.

Case No. 19/2016
Date of institution: 18.02.2016
Date of Decision: 03.11.2018

Qasim Masih Son of Yousaf Masih,
Resident of Main Bazar, House No.16-A, Satellite Tow, Sargodha.
(Claimant)

Versus

Asad Naseem Son of Naseem Ahmad, proprietor Car Palace,
Resident of Banglow No.9 House No.103, Old Civil Line, Sargodha.
(Defendant)

Ali Murtaza Naseer Qureshi Advocate for the claimant.
Malik Muhammad Yaqoob Balka Advocate for the defendant.

J U D G M E N T
03.11.2018

This is a complaint by Qasim Masih petitioner against the defendant with the assertion that the defendant runs his business as a car dealer on his show-room with the name of "Car Palace" at Railway Road Sargodha. On 06.01.2015 he purchased a car Honda Civic, colour Silver, Model 2008, registration No. LEA-08-8726 (secondhand) from the defendant in consideration of Rs.1400000/-. He further asserted that at the time of sale, defendant assured him that he is the actual owner of the said vehicle which is genuine, neither accidented nor stolen and in case any defect is disclosed, he will be responsible to pay Rs.500000/- to the claimant as damages. He also stated that on second day after the purchase, he went to a workshop for installation of CNG cylinder where he came to know that the vehicle in question was not in genuine condition as the same was accidented and repainted. In this regard, he approached the defendant with his complaint about the said defect in the vehicle whereupon he assured the claimant to redress his grievance but later on he flatly refused to compensate him. After that he issued two legal notices one of the same is Mark-PA, to the defendant dispatched through TCS vide receipt dated 21.01.2016 Exh.P-5.

2. *Since the notices issued to the defendant were not responded, therefore, the petitioner brought his instant claim on 18.02.2016 and prayed for the recovery of damages Rs.1000000/- (ten lacs).*

3. *Defendant was summoned, who appeared and*

contested the case by filing his written statement dated 05.03.2016, denying the claim, taking various objections and prayed for dismissal of the same.

4. In order to prove his case the claimant himself appeared as Pw-1 and examined Azhar Iqbal as Pw-2, Asif Raza as Pw-3 and Muhammad Nawaz (expert) Pw-4. He also produced his documentary evidence i.e. the affidavits of the Pws as Exh.P-1, Exh.P-1/1, Exh.P-2, Exh.P-3, Inspection Report of the subject matter car submitted by Muhammad Nawaz Service Manager Honda Citrus Field (Pvt) Ltd Sargodha as Exh.P-4, TCS Receipt Exh.P-5, Agreement dated 06.01.2015 as Exh.P-6, Agreement dated 24.02.2015 as Exh.P-7, attested copy of application under Section 22-A/22-B Cr.P.C as Exh.P-8, copy of order dated 18.05.2016 as Exh.P-8/1, Copy of application U/S 22-A/22-B Cr.P.C titled "Qasim Masih. Vs. DPO, etc. as Exh.P-9, Copy of order dated 13.01.2015 as Exh.P-9/1, Copy of application U/S 22-A/22-B Cr.P.C titled "Asad Naseem. Vs. SHO PS Cantt. as Exh.P-10, copy of Police Report as Exh.P-10/1, copy of order dated 13.01.2015 as Exh.P-10/2, attested copy of FIR No.60 dated 04.12.2010 registered at P.S.Cantt. as Exh.P-11, Delivery Report dated 22.01.2016 by TCS as Exh.P-12 and legal notice Mark P-A and closed his evidence.

5. In rebuttal the defendant No.1 appeared as Dw-1 and examined Zohaib Ali as Dw-2. He also produced his documentary evidence i.e. the affidavits of Dws as Exh.D-1, Exh.D-2, two agreements as Exh.D-3 & Exh.D-4 with copy of agreement dated 18.07.2014 as Mark -DA and closed his evidence.

6. Arguments heard and record perused.

7. Learned counsel for the claimant has argued that the claimant has successfully proved the sale transaction dated 06.01.2015 of motorcar Honda Civic, registration No.LEA-08-8726 for the price of Rs.1400000/- from the defendant car dealer and Ex-owner of the subject matter alongwith its concealed defect being accidented which reduced its actual market value, resulted into a monetary loss fraudulently caused by the defendant to the claimant. He further added that he also proved other terms of sale agreement alleged in the pleadings and fulfillment of requirement of issuance of legal notice to the defendant before the institution of this case. He also argued that the defect in the vehicle in question being accidented before its sale, has been proved through an independent

evidence of an expert witness i.e. Pw-4 and loss caused to him due to misrepresentation of the said fact on the part of the defendant, therefore, he is entitled for the recovery of the amount of Rs.500000/- as actual loss suffered as a difference between the sale price of a genuine car qua an accidented like the subject matter car with an amount of further Rs.500000/- for the breach of terms settled between the parties. He finally argued that the claimant has also proved the previous conduct of the defendant for commission of the identical misrepresentation to his brother customers also.

8. On the other hand, learned counsel for the defendant has argued that the claimant has miserably failed to prove his case against the defendant through some reliable evidence and the claimant is estopped to bring this case because as per agreement dated 24.02.2015 (Exh.P-7) all the previous disputes between the parties were settled, therefore, there is no room for the re-agitation a dispute prior to the said date. He also argued that the case of the claimant is barred on concealment of material facts, therefore, he is not entitled for the relief sought for. He finally argued that the cause of action in this case allegedly accrued on 07.01.2015 when the claimant came to know about the alleged defect but he issued legal notice on 21.01.2016 vide receipt of TCS Exh.P-5 and the case was instituted on 18.02.2016 with a delay of one year.

9. I have considered the contentions of both the sides in the light of record and law on the subject.

10. The case of the claimant is badly time barred because as per his own version he purchased the subject matter car on 06.01.2015 and the defect in question had come into his knowledge on the next day i.e. 07.01.2015 but he issued the legal notice under Section 28(1) of the Punjab Consumer Protection Act, 2005 on 21.01.2016 and instituted this case on 18.02.2016 with a gap of more than one year after the accrual of his cause of action.

11. It has also been noticed by this court that on 24.02.2015 an agreement (Exh.P-7) was executed between the parties that all the disputes between them related to the sales and purchase of cars including the subject matter car number LEA-08-8726 had been settled and no obligation between them was left behind. This agreement produced by the claimant himself creates a bar by way of an absolute estoppel against the institution of this case.

12. For the above mentioned reason, the instant case of the

claimant is hereby dismissed with no order as to costs.

13. *Copies of this judgment shall be communicated to the parties, free of costs, as required under Rule 17 of the Punjab Consumer Protection Rules, 2009.*

14. *File of the case be consigned to record room after its due compilation.*

Sd/-

Announced
03.11.2018

**Presiding Officer,
District Consumer Court,
Sargodha.**

Certified that this Judgment is consists of 04 pages, which have been dictated, corrected and signed by me.

Sd/-

**Presiding Officer,
District Consumer Court,
Sargodha.**