



بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

**IN THE COURT OF MALIK PEER  
MUHAMMAD DISTRICT & SESSIONS  
JUDGE, DISTRICT CONSUMER COURT,  
SAHIWAL.**

**SHAHZAD AHMAD S/O MUHAMMAD ASGHAR  
R/O HOUSE NO. 248/F, FARID TOWN,  
SAHIWAL.**

.....CLAIMANT

**Versus**

**DOCTOR ZAEEM MARGHOOB, CLINIC AT  
OPPOSITE MASJID SHOHDA, FARID TOWN,  
SAHIWAL.**

-----RESPONDENT

Date of institution 09-10-2010  
Date of decision 20-09-2011

**APPLICATION U/S 25 OF THE PUNJAB CONSUMER  
PROTECTION ACT 2005.**

**ORDER**

1. According to the precise facts of the this claim, claimant Shahzad Ahmad has moved this claim with the ground that he is a resident of Farid Town Sahiwal and since two years prior he set out Malaysia in connection with his curriculum activities. In the month of February 2010 he returned back Sahiwal to see his parents. On 11-05-2010 when he was riding upon his motorcycle, he met with road accident and get right arm fracture. In connection for his treatment he darted to the Haji

Qayyoom Hospital where respondent after observing his injuries advice him for treatment in his private clinic. According to the alluring of the respondent claimant visited his clinic alongwith Javid Iqbal where respondent advice him Xray and after Xray Film he was intimated that his right arm has been fractured, hence respondent advice him for immediate operation. He received Rs. 15,000/- operation fee and affixed stainless plate for healing his fracture. Claimant remained under his treatment privately where he bore more Rs. 10,000/- for his treatment. After that he occasionally visited the clinic of the respondent for his medical check up but his fracture could not be healed up. Day after day pain was increased in his arm. Respondent admitted his negligence for his wrong operation and advice to the claimant for another operation, claimant being disappointed went to the Ghurki Trust Teaching Hospital Lahore where Doctor Naeem Ahmad observed his injuries and noticed that wrong plates were affixed by the respondent at his fracture place. Due to the non competency and defective operation of the respondent, claimant received a loss Rs. 1,50,000/- in connection with medicines Rs. 25,000/- for re-operation, mental torture to the tune of Rs. 50,000/- and Rs. 50,000/- for his body pain. Hence claim be decreed as prayed.

2. Claim was resisted by the respondent and filed written statement. It is averred in the written statement that the claim is false, based upon malafide intention, concocted and baseless and only for to mental torture to the respondent. Plaint is liable to be dismissed under order 7 rule 1 of CPC. That the petitioner was rightly treated by the respondent, his operation was perfectly accomplished but later on petitioner did not follow the

precautionary measures for which claimant might have received the pain and that the petitioner himself turned up in his clinic voluntarily for his treatment and on the request of the claimant he operated to the patient and affixed right stainless plate. He further contended that he remained active and his fracture was healing up but he did not take precautionary measures resultantly patient might have disturbed due to his none observation of his advice. It is further argued that letter ex-p 4 issued by the Dr. Muhammad Imran is concocted, false. Further it is also contended that the said author of the letter who is allegedly Dr. Muhammad Imran has not been produced in the witness box as far to prove his written letter. Defendant further argued that petitioner himself not turn up in the court to get record his statement and to prove the allegation leveled in the claim for which claim be dismissed with cost.

3. After completing the pleadings both the parties produced their respective evidence. Petitioner produced Muhammad Asghar as Pw-1 as a sole witness on the documentary side he produced special power of attorney as Ex-P1, legal notice as p2, post office receipt as p3, letter dated 26-08-2010 issued by the department of Ghurki Trust Teaching Hospital as p4, discharge card of the Ghurki Hospital as p5, letter issued by the respondent dated 15-06-10 as p-6, receipt for purchase of medicines p7, p8, prescription as p9 to p19 - prescription as Ex p-20 to 22, receipt of purchase of medicine as Ex-p23 and closed the claimant's evidence.

4. On the other hand defendant himself appeared as Dw-1 as a sole witness, no other witness was produced for corroboration nor he produced any documentary evidence.

5. Arguments heard. Record perused.

6. The first question before the court is that whether the claimant is consumer or not as provided in the PCPA 2005. Respondent by filing his written statement and fall in the witness box has not denied the status of the petitioner as consumer and none rendering his services. When both the parties are focused on the point that petitioner is consumer hence this claim is not disputed therefore petitioner has rightly filed the instant claim to redress his grievances.

7. The next pivotal question before the court is that if the respondent being unskilled doctor affixed wrong stainless plates upon the claimant's fracture or by making alluring commitment advice to the petitioner for his private treatment. To answer this question this court has to resort to the evidence of both the parties. In order to discharge legal onus probandi Muhammad Asghar appeared in the witness box as Pw-1 and deposed that on 11-05-10 Shahzad Ahmad patient met with an accident when he was moving towards the College, he took him to the Qayyoom Hospital where respondent met with him and after providing first aid he advised him to shift the patient in Qureshi Hospital for private treatment. He took the patient in the said hospital whereby respondent operated him and wrongly affixed stainless plates resultantly the wounds of his son did not hale up for his wrong treatment further he incurred a lot of money for his treatment in Ghurki Hospital, Lahore. This Pw is the real father of the patient Shahzad Ahmad and similarly he appeared in the witness box as pw-1. He described all the minute detail of the accident further more treatment of respondent doctor.

8. So far the argument that respondent Doctor Zaeem Marghoob being unskilled doctor affixed wrong size stainless plates on the fracture for the recovery of the patient. In this regard letter ex-p 4 is referred and reproduced for ready reference

“ According to AO principles semi tubular plate 4.5 mm screws are not recommended. We apply small DCP 3.5 screws which is recommended for # of Radius & Ulna. We have removed the tubular place & applied DCP with bone graft”

to rebut this letter respondent while appearing in the witness box as Dw-1 deposed that patient was operated upon on 11-07-10 and after that he was released from hospital and his wounds were gradually healing. Respondent deposed that patient has to be observed some precautionary measures for early recovery but claimant did not follow the valuable directions and did not adopt precautionary measures hence he sustained deformity. This Dw further met with the cross examination and denied the allegation regarding receipt of the fee in the Qureshi Hospital. Letter Ex-p4 dated 26-08-10 was not received by him issued by the Dr. Muhammad Imran. He specifically assailed this letter being fraudulent and concocted as petitioner himself created one piece of evidence in his favour. He further admitted in the cross examination that he installed plates of 4.5 mm but he refused that plates of 3.5 mm were to be installed. He is a skilled doctor and according to the width of the fracture, such like plates can be applied for the treatment of the patient. I have anxious thoughts and gone through the statement of both the parties and it is observed that in view of the lex-lata any document relied by any party far

to prove his case, he required to produce author of that document before the court and the said author required to be met with cross examination by the opponent counsel as far to dig out the actual truth. Doctor Muhammad imran who allegedly drafted Ex-p4 is not summoned nor produced in the court. It is also not proved by the claimant that the said doctor was not available in the Pakistan and petitioner is unable to procure his attendance before the court for his statement. In my legal opinion when the author of the letter is not produced before the court to prove this letter. Hence this letter loses its legal sanctity.

9. So far the argument that petitioner remained under the treatment of the Ghurki Hospital where he sustained further financial losses for his treatment, the second operation of the patient is not denied by the respondent doctor Zaeem. Respondent simply stated that patient has not taken precautionary measures advised by him due to which the deformity was arisen. Apart from this claimant has also not appended any receipt nor produced any receipt to show that claimant deposited the operation fees to the Qureshi Hospital nor he produced by the receipt of Ghurki Hospital . This piece of evidence required to be produced to the petitioner to prove his case. Claimant produced before the court receipts of the purchase of medicines as Ex-P7,12,13,14,15,16,17,18,19,23, and no other receipt produced by the petitioner. It is admitted fact that claimant remained under the treatment of Ghurki Hospital where he purchased the medicines. It is not denied by the respondent doctor. hence claim of the

claimant is partially allowed and the expenses of the claimant which he incurred for the purchase of medicines are granted to the claimant which are to the tune of Rs. 8303/- (Eight thousand three hundred three rupees) claimant is also awarded Rs. 12,000/- (Twelve thousand rupees) as litigation charges. Respondent will pay total Rs. 20303/- (Twenty thousand three hundred three rupees) to the claimant within one month from this order. The Registrar of this court is directed to dispatch copy of the orders to the Directorate of Punjab Consumer Protection council for the purpose of compliance of Rule 25 ibid.

10. File be consigned after its due completion.

**Announced.**

20-09-11

**Malik Peer Muhammad**  
District & Sessions Judge/District Judge  
Consumer Court Sahiwal

Certified that this order consists of seven pages which have been dictated and signed by me.

**Malik Peer Muhammad**  
District & Sessions Judge/District Judge  
Consumer Court Sahiwal