

IN THE COURT OF BAKHT FAKHAR BAHZAD,
DISTRICT & SESSIONS JUDGE/JUDGE CONSUMER COURT
GUJRAT

CASE NO. 79-2016
Date of institution: 04-10-2016
Date of decision: 22-05-2017

Sarwar Rasheed, Shadman Colony Rural , Teh & Distt Gujrat.

Claimant

Vs

Proprietor Lahore Traders through Ch. Muhammad Shabir Warraich, G.T.Road, Super Market
Gujrat.

(Defendant)

Present: Claimant Sarwar Rasheed along with his counsel Mohsin Shahzad Cheema
Advocate.
Defendant Muhammad Shabir Warraich along with his counsel Syed Ali Mosa
Advocate

**COMPLAINT/CLAIM UNDER SECTION 25 R/W Ses30 OF PUNJAB CONSUMER PROTECTION
ACT,2005**

Judgment:

1. Hill journey of the claimant started on 16-06-2016 when he purchased a Battery of 200 AMP in the sum of Rs. 9,300/- from the defendant who provided warranty for six months. The Battery became out of order before the expiry of warranty i.e one month after its purchase. When the matter was reported to the defendant by the claimant he replaced the said Battery on 14-08-2016 and that too also not found in working conditions. Thereafter, he again made a complaint to the defendant but he remained shuffling the matter on one pretext or the other. Being wretched by the conduct of the defendant, the claimant dispatched a legal notice to the defendant but he did not pay any heed. So being disgruntled from his conduct, the claimant had been constrained to file the instant claim under section 25 of the Punjab Consumer Protection Act, 2005 (herein after referred to as "Act" for brevity). The defendant appeared on 17-10-2016 and made request for the submission of written statement thereafter proceedings in this claim progressed at snail's pace and the claim was adjourned many time for the submission of written reply and ultimately the defendant submitted the written reply and confuted each and every para of the claim in stereotype manner rather he submitted the reply in boggle manner and thereafter he disconnected himself from the proceedings of the court and ultimately his attendance was procured again instead of proceedings ex-parte. As the apple of discord as revealed by story put forwarded by both parties was with regard to the

defective product i.e Battery. Therefore instead of adopting lengthy procedure of recording evidence, this court exercised powers for inviting expert opinion as required under section 30 (1) (c) of the Act read with Rule 15. For better appreciation it would be appropriate to place on record the provisions of section (1) (c) of Punjab Consumer Protection Act, 2005 and Rule 15 of Punjab Consumer protection Rules, 2009 which are hereby reproduced as under:-

Section 30 (1) (c) “where the claim alleges that products are defective and do not conform to the accepted industry standards, the Consumer Court may decide the dispute on the basis of the evidence relating to the accepted industry standards and by inviting expert evidence in this regard;”

Rule 15 (1) The Court may direct the claimant to provide more than one sample of the product.

(2) If a sample has been sent to a laboratory by the Court, the laboratory shall send a copy of the final report alongwith the method of analysis or test used to the Court, the claimant and the defendant.

(3) If any of the party disputes the correctness of the findings or the method of analysis of the laboratory, it shall submit its objections in writing to the Court within fifteen days of receipt of the report.

By exercising the above said powers Principal Govt Technical Training Institute, Service Mor Gujrat was directed to appoint expert and submit report on 08-05-2017 the following order was passed:-

2. Arguments of both the parties have been heard. The claimant has alleged that defective product / battery has been supplied by the defendant which do not conform to the accepted industry standard, As the claimant has alleged supply of defective product / battery which can only be determined by proper analysis of the test as required under section 30 subsection (c) states as under:-

(c) where the claim alleges that products are defective and do not conform to the accepted industry standards, the Consumer Court may decide the dispute on the basis of the evidence relating to the accepted industry standards and by inviting expert evidence in this regard;

3. So during the proceedings of the claim on 08-05-2017 the following order was passed “After perusing the above mentioned section of the Act it has been established that the controversy between the parties cannot be resolved without inviting the expert opinion, so, the claimant is directed to deposit the battery in this Court and the Registrar of this Court is directed to seal it properly and sent the same to Hon, able Principle, Govt Technical Training

Institute, Service Mor Gujrt with the direction to appoint an expert with the view to finding out whether this battery suffers from any defect as alleged in the claim or from any other defect and to submit the report on the next date of hearing. The fee of the expert is fixed Rs. 2000/-, the claimant shall deposit of extra Rs. 500/- as transportations charges by the claimant with the registrar of this Court today and on deposit of fee, the registrar of this Court shall send the battery to principle, Govt Technical Training Institute, Service Mor Gujrat in sealed condition. On submission of expert report the registrar shall pay deposited amount Rs. 2000/- to the expert. Before parting of this order it would be appropriate to bring on the record provisions of section 36 of PCP Act 2005 which are hereby produced as under:-

Aid to the Consumer Court.– All agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.

The claimant has deposited the battery in the Court which is marked as Ex.P1. The copy of this order, sealed battery and copy of the claim be sent to principle, Technical Training Institute, Service Mor Gujrt for submission of expert opinion and for strict compliance.”

4. *In pursuance of above said order detailed report was submitted by the expert and thereafter the parties were directed for submission of objections on the report of expert as well as for final arguments but both the parties did not opt to submit objections on the report of expert.*

5. *The bouvier of the claimant is that the defendant provided him a defective product i.e Battery and gave six month warranty and in this regard issued receipt while the arguments of the defendant are that he replaced the Battery to save good name of his business and further stated that the replaced Battery is still in working condition.*

6. *I have heard the arguments advanced by both the counsels for the parties at length and has perused expert opinion regarding Battery and have straight a way observed that peccadillo of the claimant was that he purchased the Battery for consideration of Rs.9,300/- from the defendant which has not been denied by the defendant, however, he asserted that he replaced the Battery and provided another Battery to the claimant which is still in working condition. It is no where available on the record and not even mentioned in the written statement of the defendant that Battery was not purchased from the defendant. There is no denial even in the written statement of issuance of receipt and warranty of said Battery. The receipt annexed with the claim reflects that valid warranty of six month was provided to the claimant. Therefore, relation of consumer and service provider has been established between*

the parties rather the defendant has admitted that he himself manufactured the said Battery. So for reaching at just conclusion I venture to place on record that with regard to Battery what the expert opinion say which is hereby reproduced as under:-

“In compliance of your office order, I , Mr. Arif Hussain , Instructor Electrical checked in detail the 200 AMP battery provided by the honorable District Consumer Court Gujrat and found the following :-

- 1. The provided battery is old and repaired.**
- 2. 02 cells out of 06 are dead and are not in working condition.**
- 3. Does not conform the factory standard.”**

7. After perusing the report of expert I have extracted that the Battery provided by the defendant to the claimant was defective and do not conform factory standard. The expert Mr. Arif Hussain , Instructor Electrical of Government Technical Training Institute, Service Mor Gujrat has no hostility against the defendant nor he had any fancy for the claimant. The parties also did not opt to submit any objection on the report of expert therefore, I have no reason to disbelieve the report submitted by the expert. In light of above submission and the report submitted by the expert I, in terms of section 30 (1) of the Act issue the order to the defendant in following terms:-

1. To return to the claimant price of Battery i.e Rs.9,300/- received from him.
2. To pay Rs.10,000/- as compensation to the claimant for providing defective product
3. Though there is no certificate of payment of counsel fee annexed with the claim but it is evident from the file that legal notice was served by the claimant through his counsel but upon failure of reply, the claimant was forced to approach this court. Therefore the defendant is also directed to pay Rs.10,000/- as lawyer's fee which incurred on the legal proceedings.
4. Claimant has deposited fee of expert as required under section 30 (1) (e) of the Act, and the test/analysis of the product has supported the version of the claimant, therefore, in terms of section 30 (1) (e) the defendant is directed to pay Rs.2,500/- to the claimant.

8. The order passed under section 31 of the Act shall be complied within one month from today. In case of failure in compliance of order by the defendant, he shall be punished under section 32 (2) of the Act with imprisonment for three months and with fine of Rs.10,000/- and if fine is not paid, the same shall be recovered from the defendant as arrears of land revenue.

9. Before parting with this order at this juncture it is apt to reproduce section 36 of Punjab Consumer Protection Act, 2005 to mobilize the government machinery as under:-

“All agencies of the Government shall act in aid of the Consumer Court in the performance of its functions under this Act.”

10. A copy of this order be sent to DPO, Gujrat, SHO PS Civil Line, Superintendant District Jail Gujrat and District Collector Gujrat to proceed strictly in accordance with law towards the compliance of the order passed by this court in its letter and spirit by putting the defendant behind the bars if he fails or omits to comply with the order mentioned above. Copies of the order has been supplied to the parties free of cost and shall also be sent to the Directorate of Provincial Consumer Protection Council as required under Rule 25 for its publication on its website for public disclosure. The Battery Ex.P1 is with the registrar of the court, the defendant is directed to collect the Battery immediately. File be consigned to record room after due completion.

Announced: 22 -05-2017

BAKHT FAKHAR BAHZAD
District & Sessions Judge/
judge Consumer Court Gujrat.

Certificate:-

It is certified that this judgment consists of five pages. Each page has been dictated, read, corrected and signed by me.

Announced: 22 -05-2017

Judge consumer court
GUJRAT.