

**IN THE COURT OF MR. ABDUL HAFEEZ
DISTRICT AND SESSIONS JUDGE / PRESIDING OFFICER
DISTRICT CONSUMER COURT, RAWALPINDI**

(Case No. 151 of 02.12.2017)

Syeda Saba Shah, D/O Syed Saleem Afandi, R/O KRL Road, Near Khanna Pull, Rawalpindi.

(Complainant)

Versus

- 1) M&P Office No. 4-D, First Floor, Akhtar Plaza Police Station Road, Saddar, Rawalpindi through Naeem Shafique
- 2) Matti Ur Rehman Manager Service North Telecommunication and Allied Business Office No.6 and 6-A, Mezzanine Floor Mehmood Plaza, Fazal-e-Haq road, Blue Area, Islamabad.

(Defendants)

**PETITION FOR CLAIM OF RS. 10,00,000/- OF THE PUNJAB
CONSUMER PROTECTION ACT, 2005**

ORDER
02.10.2019

Briefly stated facts of the case are that the complainant purchased a mobile Huawei Mate-8 on 10.08.2016 for the consideration amount of Rs. 68,000/- having IMEI No. 868407022939118, Champaign Gold Colour from defendant No.1, the warranty card of the mobile was given to the complainant by defendant No.2;- that on 11.02.2017 complainant fell upon stairs alongwith said cell phone, resultantly the cell got damaged;- that complainant approached to defendants for the claim of warranty on 21.02.2017 upon which Naeem Shafique dealt with

claim and similarly claim / job No. 2026 was issued to complainant after the submission of said mobile;- that defendant No.2 manager services north contacted on 28.02.2017 to complainant and demanded for 50% of the total amount of said mobile phone according to current market price of cell phone, which he claimed Rs. 64000/- now. The complainant got shocked and tried to explain him that now market value of said mobile is decreased to around Rs.48000 to 50000/- now because new model of Huawei has launched in the market, so he should take the 50% amount of the said mobile phone according to the actual market price but he did not listen to the genuine request of complainant and took time to discuss with his senior management;- that after a lot of request made to defendant No.2 who agreed to listen and demanded to complainant to give the quotations of said mobile regarding current price in market. On the request of defendant No.2, complainant took the rates of cell phone of same model available from different shops and sent to the defendant No.2 which was between Rs. 43000 to 45000/- in the month of May, 2017;- that during that period complainant many times requested to defendant No.1 as well as defendant No.2 but all in vain;- that after few days, complainant once again contacted with defendant No.2 and he finally got ready to listen the request of complainant upon which complainant requested him to focus on

the 50% amount of the said mobile phone according to market price which was decreased upto Rs. 43000/- to 45000/-, after hearing all these requests he again took time to discuss with his superiors to finalize the claim;- that on 29.03.2017, 05.04.2017, 10.04.2017 and 24.04.2017 complainant through messages and several calls tried to contact with defendant No.2, finally defendant No.2 agreed to process according to actual market price @ Rs. 45000/- but when complainant approached to defendant No.1 with 50% of Rs.45000/- the said company again refused to proceed. It is pivotal to mention here that the said mobile is lying in defendant NO.1 since 21.02.2017;- that defendants played fraud with complainant and after making commitment did not replace the said mobile phone according to market price agreed by defendants with complainant;- that the defendant has violated the terms of sections 18, 19 and 21 of PCPA, 2005 and therefore, is liable to be punished in accordance with law;- that the complainant also issued the notice to the defendants under section 28 of PCPA, 2005, but no reply from the defendants have been received;- that the cause of action accrued on 10th August, 2016 when the complainant purchased the said mobile phone, secondly when the complainant approached the defendants for replacement of said mobile thirdly when the complainant sent notices and finally two days

ago when the defendants did not pay any heed to the genuine request of the complainant which is continuous;- that the cause of action accrued at Rawalpindi hence this Hon'ble court has got jurisdiction to entertain and adjudicate upon the subject matter;- that prescribed court fee has been affixed on plaint. Lastly it is prayed that defendant may kindly be directed under section 256 and to redress the grievances of the complainant, it is further prayed that the defendant may kindly be penalized for the violation of section 16, 18 and 19 of PCPA, 2005 and exemplary punishment may kindly be awarded to defendant throughout with cost in the interest of justice. Any other relief which this Hon'ble court deems fit and proper may also be awarded.

2. On the contrary defendants filed written reply, wherein they took various preliminary objections and stated that at the very outset, it is submitted that the defendants No.1 and 2 are officials / employees of M/s Muller & Phipps Pakistan Pvt. Ltd, therefore, the company which is Pvt. Ltd company registered as such under the companies Ordinance, 1984, is filing the reply for and on behalf of the said defendants through Mr. Mati-ur-Rehman, service centre Manager, M&P Huawei Service Centre, Rawalpindi who is fully conversant with the facts and circumstances of the case and has been duly authorized by the company to sign and verify the same through authority letter,

appended herewith;- that the instant complaint is hopelessly time barred, and is liable to be dismissed straight away. The purported cause of action had accrued to the complainant prior to the first legal notice dated 16.09.2017 sent by the complainant, wherefore the complaint under reply is time barred since the complaint was to be filed within 30-days after sending the legal notice;- that the defendant company is the distributor of Huawei mobile phone in addition, the defendant's company also provides warranty service to their customers with respect to the particular terms and conditions contained in the M&P warranty card, which does not include accidents and self-inflicted damage, for ease of reference, the relevant portion of the M&P warranty is reproduced herein under:-

“The warranty cover shall be confined to the handset and shall not cover battery, charger, cables, memory card, headphones or any other component supplied alongwith. This warranty shall not cover and loss or damage due to liquid damage, accident, burn, abuse, misapplication...”

That it may be pertinent to note that the accidental coverage service namely “damage managed” is provided by the AON Insurance, and Accidental Coverage claims under the said service are only forwarded to AON Insurance by the defendant's

company. The said claims are either approved or rejected by the said Insurance company in accordance with the terms and conditions of the warranty / insurance cover provided by it. It is, therefore, most humbly submitted that the defendant's company has not provided, and is, as such, not liable for any claims on account of any accidental damage to a mobile phone, and the instant petition is not maintainable against the defendant's company as the grievance of the complainant is beyond the scope of the warranty that is being provided by the defendant's company (copies enclosed);- that the instant complaint is false, frivolous, vexatious and it has been filed by the complainant with malafide intentions. The instant complaint fails to disclose a cause of action that accrues in favour of the complainant, against the defendant's company as the complainant's grievance with regard to accidental coverage insurance has already been approved by Aon insurance and the insurance company is already and willing to replace the complainant's damaged mobile cell phone with a new mobile phone according to the terms and conditions of the "Damaged Managed" warranty i.e. payment of Rs. 32000/- (half of the price of mobile phone) and provision of the box of the damaged handset therewith (copy of emails are enclosed);- that the defendant's company is a separate and distinct legal entity from its official, which is capable

of suing and being sued in its own name. Moreover, the defendant No.2 is an employee of the defendant's company and acts on its behalf, therefore, the said defendant may very graciously be deleted from the list of defendants. On merits they replied that contents of para No.1 needs no reply since it is a matter of record;- that the contents of para NO.2 are a matter of record and therefore, need no reply;- that the contents of para No.3 need no reply since it is a matter of record;- that the contents of para No.4 are denied. The defendant's company required the complainant to pay 50% of the total price of the defendant's company as it was a case of accidental coverage and was accordingly approved by the insurance company for replacement under the accidental coverage warranty under the category of "total loss". The relevant portion of the said accidental coverage warranty provided by AON insurance is reproduced herein under:-

"29 10% deductible / month will be charged up to first 6 months in case of total loss claims, which occur due to accidents (physical & spillage). Customer will be charged maximum 50% depreciation in 1 year. Minimum of 10% depreciation will be charged if claim will occur before the warranty start-up date"

Therefore, the defendant's company cannot be liable for a service that they do not provide since the warranty that is being provided by the defendant's company cannot be invoked;- that the contents of para No.5 are vehemently denied. The complainant did in fact send the price quotations with regard to the mobile phone to defendant No.2 but these quotations were not substantial since a representative of the defendant's company, one Mr. Babar Hussain, visited the shops that the complainant had referred to but those mobile cell phones were used mobile phones, therefore, the prices mentioned in para No.5 did not pertain to the actual market value of a brand new mobile phone of the same model;- that the contents of para No.6 are denied since the case of complainant has been approved by the insurance company and a new mobile phone of the same model shall be provided to the complainant provided that the complainant pays the amount of Rs.32000/- and provides the box of the damaged phone therewith;- that the contents of para No.7 are vehemently denied. As it has been already mentioned, the prices quoted by the complainant pertaining to a new mobile of the same model and make were incorrect. Moreover, the price of a new mobile phone of the same model was capped at Rs. 58000/-;- that the contents of para No.8 are vehemently denied. Defendant No.2 had never agreed to process the complainant's

case against half of the total price, where the total price amounted to Rs.45000/-. The complainant's claim has been approved by the insurance company in accordance with the terms and conditions of the accidental coverage insurance whereby the complainant is required to pay Rs. 32000/- return the damaged mobile phone alongwith the box;- that the contents of para No.9 are denied. The contents of the above para's are reiterated;- that the contents of para No. 10 are vehemently denied. The defendant's company is not liable to replace or fix the complainant's damaged mobile phone as there is admittedly no manufacturing defect in the complainant's mobile phone. However, the complainant's case has been approved by the insurance company, therefore, the defendant's company is not in contravention of any of the mentioned provisions of the PCPA, 1995 since the service is not being provided by them and nor has the complainant been denied her right to get a new phone according to the terms of the accidental coverage service;- that the contents of para No. 11 are denied;- that the contents of para No. 12 are vehemently denied. There is no cause of action that accrues to the complainant since the complainant's claim has been approved by the insurance company. That, be that as it may, the defendant's company cannot be held liable for a service that they do not provide, para No. 13 & 14 are legal. Lastly

it is prayed that complaint being false, frivolous, meritless and vexatious may kindly be dismissed with costs. Any other better relief under facts and circumstances of the instant case may also most graciously be granted.

3. In order to prove the case against the defendants, complainant Syeda Saba Shah herself appeared as PW-1 and submitted her statement on affidavit Exh-PA. She also tendered documents i.e. copies of legal notices delivered to defendants Mark-PA, its postal receipt Exh-PB, copy of another legal notice delivered earlier to defendant No.1 Mark-PB, its postal receipt Exh-PC, photocopy of legal notice delivered to defendant No.2 on 16.09.2017 Mark-PC and its postal receipt Exh-PD, legal notice delivered to defendant No.2 on 31.10.2017 Mark-PD and its postal receipt No. 811 Exh-PE, copy of sale invoice / bill Mark-PE, copy of customer statement document Mark-PF, copy of job sheet Mark-PG, original of said Mark-PE to Mark-PG are with defendants. Mr. Roheel Irshad was examined as PW-2, he submitted his statement on affidavit Exh-PF.

4. On behalf of defendants Mr. Shafique Khan, service technician M&P Pakistan Ltd. Service Centre, Islamabad was examined as DW-1, he submitted his statement on affidavit Exh-DB/1-7. He also submitted documents i.e. letter of authorization Exh-DA, copy of resolution by circular Mark-DA, copy of legal

notice Mark-DB/1-3, copy of sale invoice / bill Mark-DC, copy of Huawei care instructions Mark-DD, copy of customer warranty card Mark-DE, copy of customer statement document Mark-DF, copy of job sheet Mark-DG, copies of emails mark-DH, Mark-DJ.

5. Arguments heard, record perused.

6. The contention of the learned counsel for the complainant is that complainant purchased a mobile Huawei Mate 8 on 10.08.2016 in consideration of 68000/- having IMEI No. 868407022939118, Champaign Gold Colour from defendant No.1, warranty card was given to the complainant on 11.02.2017, it fell down and damaged, complainant approached the defendant for the claim of warranty on 21.02.2017, at this claim / job No. 2026 was issued on 28.02.2017 defendant No.2 contacted with the complainant and demanded 50% of total amount Rs. 64000/- and claimed that Rs. 64000/- is a current market price of the mobile phone. The complainant replied that it has decreased upto 48 to 50 thousand and offered to pay 50% of 48000/-. On the demand of defendant No.2 the complainant collected the rate from market, the said rates were also between 43 to 45 thousand in the month of May, 2017, they took further time to discuss with superiors, but did not give the reply, thereafter on 24.04.2017 through messages and several telephone calls tried to contact with the defendant No.2, he agreed to process @ Rs. 45000/-, but

when complainant approached him with 50% of Rs. 45000/- they refused, the mobile is still lying with the defendant No.1. The mobile was a defective mobile and of low quality due to said reason it was damaged. Moreover, the services of the defendant were also defective as they prolonged the matter and thereafter refused to the complainant. He further contended that the defendants have admitted in para No.3 that defendant's company is a distributor of Huawei Mobile phone in addition the defendant's company, also provides warranty services to their customers with respect to the particulars terms and conditions contained in the M&P warranty card. In para No. 4 the defendants have admitted that the accidental coverage service namely damage manage is provided by the AON insurance and accidental coverage claim under the said service are only forwarded to the AON insurance by the defendant's company. He further contended that in the para No.7 of the written statement the defendants have admitted that the price of a new mobile phone of the same model was capped PKR. 58000/-. The original warranty card and accidental warranty card are also lying with the defendants. He further contended that during the pendency of the case on the application of the defendants application under order 7 rule 11 CPC has been dismissed vide order dated 28.01.2019. Moreover the issue of limitation had also

been decided vide order dated 28.01.2019, therefore, this court has the jurisdiction to decide this complaint. The complaint has been filed within limitation period, the complainant is a consumer and defendants are manufacturer / service provider. He further contended that the issue of impleadment of Huawei and AON insurance in the titled complaint have also been decided against the defendant vide order dated 18.07.2019. The defendants did not file any appeal against the above said orders of this court and said orders have attained finality. The said issues cannot be reopened by the defendants, the complaint may be accepted.

7. On the other hand the contention of the learned counsel for the defendants is that the complaint is not maintainable in this court, the complainant has no cause of action, the complaint is barred by time, the complainant did not comply mandatory requirements of section 28 of PCPA, 2005, Huawei and AON insurance company are the necessary parties for the decision of this case. The defendants did not sale the mobile phone to the complainant nor received any sale consideration from the complainant. Moreover, no consideration money was paid by the complainant for procuring any services of the defendants to the defendants. The complainant did not implead the retailer as defendant, who was also necessary party, it was the retailer who received the sale consideration from the

complainant, M&P / defendant is not manufacturer, the manufacturer is the Huawei. He further contended that utmost the complainant may claim accidental warranty from the insurance company, she has to file the claim before the insurance tribunal being a policy holder. He further contended that section 16, 18 and 19 of PCPA, 2005 do not attract in this case. He further contended that there are contradictions in the statements of the PWs. Moreover the PW- submitted his statement on affidavit which is a ditto copy of affidavit submitted by PW-1, there is no evidence that at the time of damaging of the mobile, its price was Rs. 43000/- to 45000/- or Rs. 44000 to Rs. 48000/-. The statements of the PWs are based upon surmises and conjectures, He further contended that there was a dispute of Rs. 19000/- in between the Rs. 64000/- actual price of the mobile shown by the insurance company and Rs. 45000/- claimed by the complainant, 50% of Rs. 19000/- comes to Rs. 9500/-, the complaint is false, the same may be dismissed. In support of his contention he relied upon Muhammad Javed Iqbal V.S Abdul Latif Alvi 2012 CLD 779, Muhammad Ameer Qazi V.S Muhammad Asif Ali and others PLD 2015 Lahore 235, Tanvir Ahmad Butt V.S The Director, Oriatier Technologies Pvt. Ltd. PLD Publishers 2018 CLD 1064, Muhammad Yasin V.S District and Sessions Judge and others 2017 CLD 1196, Muhammad Riaz V.S Mian Aamir Rasheed and others 2016 CLC

Note 122, Plum Qingqi Motors Ltd. V.S Muhammad Moeed and others 2015 CLC 1538, Sui Northern Gas Pipe Lines Ltd. through its General Manager V.S Shahzada Khosh Bakhat Khan PLJ 2015 Lahore 183, Messrs Sui Northern Gas Pipeline Ltd through General Manager and 2 others V.S Abdul Hameed 2012 CLD 1428, Muhammad Tayyab V.S Ilyas Mehmood 201 CLR 44, Regional Manager, Adamgee Insurance Company Ltd. V.S Presiding Officer, District Consumer Court, Lahore and 3 others 2012 CLD 846 and contended that the complaint is false and frivolous and same may be dismissed with costs.

8. Arguments heard, record perused.

9. The perusal of the evidence shows that in order to prove the case against the defendants, complainant herself appeared as PW-1. Beside the other documents, she submitted her statement on affidavit Exh-PA and on it admitted her signature Exh-PA/1, in it she reiterated the facts mentioned in the complaint. In cross examination she deposed that the shop from where she purchased the mobile phone is situated at Saddar, at the time of purchase of mobile, representative of mobile company was present there, he did not made the party in the complaint to the shop keeper from whom she purchased the mobile phone, she admitted that the warranty card of the mobile was with the packing of the mobile phone. She further admitted

that alongwith the packing a card of care plus was also given to her, she did not read the care plus card and terms and conditions of the warranty. On 11.02.2017 she fell down from the stairs, then her mobile phone was fallen and broken, thereafter she contacted with M&P's company for claim, they handed over her a job sheet Mark-PG, after reading Mark-PG she made her signatures on it, her signatures on it are proof of it that she and company are bound by the contents of it, she admits that as per contents of Mark-PG she and company in case of liquid damages, unauthorized repair, warranty could not be entertained, warranty period was of one year, on the said ground she filed the claim, in reply to question that the warranty for which she filed the claim, in it, accidental warranty was not included, she replied that she has no knowledge that in this warranty which once type of damage was included and which was not included. Only ones she visited the service centre of defendant. The representative of the company did not tell him that in the warranty accidental damage is not included. The representative of the company did not tell her that as per instruction of Huawei care plus she can get a new mobile, she admitted that the representative of the company told her that her mobile has been damaged, but as per instructions of Huawei care plus after the paying of 50% of the price she may get new mobile phone,

manufacturer of her mobile phone is Huawei. It is not in her knowledge that the representative of the company told to her to receive new mobile after paying 50% on the basis of offer given by Huawei Company. She admitted that after the purchase of the mobile she has entered into of contract as per terms of care plus with Huawei company, she has no knowledge that what is mentioned on care plus card, Huawei is not party to the complaint, she has no knowledge that as per Huawei care plus her claim was to be accepted or rejected by the insurance company, she purchased the mobile in Rs. 68000/-, company asked her to pay Rs. 32000/-, but at that time the market value of half amount of her mobile was Rs. 22500/-, she do not remember that in which month where said mobile phone was available in Rs. 45000/-, she procured the quotation of mobile phone price Rs. 45000/- from two / three shops, she again said in February, 2017 to August, 2017 its price was Rs. 45000/-, she got the price from the shops on the back side of visiting card of said shop keeper, she did not produce the said card in court. She admitted that she was prepared to pay 50% of the said amount of which she purchased the mobile phone. Twicely she contacted with the representative of the company, thereafter her cousin contacted with the representative of the company, she has no knowledge that Huawei and Insurance companies are necessary parties to

this complaint, she admitted that her dispute with the company was to the extent of the price of the company, her stance was that she is ready to pay 50% of Rs. 45000/-, had the company accepted the 50% of the price told by her, she would have not institute the complaint against the company, after the delivery of notice, representative of the company contacted with her and negotiation continued, when they refused to accept her stance she delivered second notice, on 21.02.2017 she submitted her claim before the company, she do not remember when the period of her mobile was expired, she admitted that it was expired on 09.05.2017, on 10.08.2016 she purchased the mobile, she denied the suggestion that to defame the company she instituted the false complaint. Mr. Roheel Irshad was examined as PW-2 he submitted his statement on affidavit Exh-PF, he admitted his signatures on it Exh-PF/1, he supported the complainant's version in it. In cross examination he deposed that he himself typed the affidavit, he got attested it from oath commissioner, at the time of purchase of mobile, he was with the complainant, the representative of the M&P was not present at that time. The warranty was not given by M&P, at the time of claim of mobile she went alongwith complainant. The representative of the company told that warranty does not cover accidental damage, the representative of the company told that claim has been

delivered to insurance company, he further told that claim has been accepted by the insurance company, the representative of the company told him and her that now complainant after paying 50% of purchase price may get a new mobile phone. The representative of the company as per terms and conditions demanded 50% of current price of the mobile, the representative of the company asked the complainant to pay Rs. 32000/-, he admitted that complainant was agreed to pay 50%, he denied that it was equal to 50% price of the mobile phone. He and complainant got checked from market that Huawei mobile is available in Rs. 44000/- to Rs. 48000/-, they have no witness of this fact, because company has agreed upon the said rate, the mobile phone is manufactured by Huawei company and the payment of 50% has been offered by insurance company, he think that in this case Huawei company and insurance company are necessary parties. He admitted that the difference of Rs, 10000/- to Rs.12000/- became the cause of institution of this case.

10. On the other hand from defendant's side Muhammad Shafique Khan was examined as DW-1, he submitted his authority letter Exh-DA and his statement on affidavit Exh-DB. In cross examination he deposed that the representative of the company who was posted prior to him has left the company, now he has been posted as his place and company has authorized him to

produce evidence on behalf of company in the court. Moreover he produced a photocopy of resolution Mark-DA, photocopy of legal notice Mark-DB/1-3, photocopy of sale invoice Mark-DC, photocopy of Huawei care plus Mark-DD, customer warranty card Mark-DE, customer statement document Mark-DF, photocopy of job sheet Mark-DG, photocopy of email Mark-DH, photocopy of another email Mark-DJ. In cross examination he admitted that it is mentioned in the job sheet when complainant came alongwith mobile phone they received warranty card and accidental card alongwith the mobile phone from her and gave the date of return 07.03.2017, email Mark-DH and Mark-DJ were not sent on his ID's email, he volunteered and deposed that these were sent to the representative of the company by the insurance company. He has no knowledge that when complaint was filed the price of mobile was Rs. 45000/-, he has got mentioned its price on that date Rs. 58000/-, he has not produced any documentary evidence in this respect, he admitted that the insurance company in the email has mentioned its depreciated price Rs. 32000/-, he admitted that in the para NO. 7 of written statement the price of the mobile phone is shown Rs. 58000/-, he volunteered and deposed that it was Rs. 58000/- capped price and it was after the filing of written statement, he has no knowledge that any conversation was made in between

complainant and defendant No.2, he has no knowledge that any conversation was made in between complainant and defendant No.2 about the quotation price of mobile phone.

11. The above said evidence shows that sale and purchase of mobile phone is admitted, but the contention of the learned counsel for the defendants is that Huawei was the manufacturer of the mobile, and AON was the insurer they both were the necessary party in the complaint, M&P is not responsible for any damage, in this respect I have gone through the record, the perusal of the order sheet shows that the learned counsel for the defendants had moved an application for impleading of Huawei and AON insurance in the complaint, said application was contested by the complainant and vide detailed order dated 18.07.2019 the said application filed by the learned counsel for the defendants was dismissed, the said order was not challenged by the defendants in the higher forum and it has attained the finality, therefore, in view of the above said the learned counsel for the defendants cannot be allowed to raise the same objection at this stage, so the said contention is hereby turned down.

The next contention of the learned counsel for the defendants is that the complaint is barred by time, in this respect he produced the above said case laws. I have gone through the

record of the case, the perusal of the order sheet shows that earlier learned counsel for the defendants had moved an application under order 7 rule 11 CPC on the ground that complaint is time barred and the complainant has not complied with the mandatory requirement of section 28 of PCPA, 2005, therefore, the complaint may be rejected. On the other hand the learned counsel for the complainant filed application for condonation of delay, on 28.01.2019 vide separate detailed order this court dismissed the application under order 7 rule 11 CPC filed by the defendants and vide separate order dated 28.01.2019 accepted the application for condonation filed by the learned counsel for the complainant and concluded that complaint has been filed within limitation period. The defendants did not file any appeal against the said orders dated 28.01.2019, therefore, in view of the above said the said orders have attained finality and learned counsel for the defendants is not allowed to re-open the said orders at this stage.

The next contention of the learned counsel for the defendants is that it is a matter of defective service, the complainant did not pay any consideration money, so complainant cannot claim that she is a consumer and defendant is a service provider. The perusal of the evidence shows that the mobile phone is manufactured by Huawei company, the M&P /

defendant No.1 is the seller of product of a foreign manufacturer and assumes and administers warranty obligations of the product and is affiliated with the foreign manufacturer by way of partial or complete ownership or control. Under section 2(h)v) of PCPA, 2005 M&P / defendant No.1 falls in the definition of a manufacturer of product / mobile. Under section 4 of PCPA, 2005 the complainant was authorized to institute the complaint against the manufacturer of a product, only here in this case the defendant No.1 is manufacturer, so the claim cannot be filed against the retailer or foreign manufacturer or insurer, but against the defendant No.1 only, so the complainant has rightly instituted the complaint against the defendant No.1, the perusal of the written statement shows that in para No.3 the defendant NO.1 has admitted that defendant's company is a distributor of Huawei mobile phones in addition, the company also provides warranty service to their customers with the respect to the particular terms and conditions contained in the M&P warranty card. The documents produced by defendants Mark-DD and Mark-DE shows that the name of M&P Pakistan Pvt. Ltd is written on customer warranty card Mark-DE, likewise the customer's statement document Mark-DF and job sheet Mark-DG too produced by defendants fully prove that mobile phone was received by the M&P from the complainant on it regarding the warranty it is mentioned that warranty was valid

on 21.02.2017, when complainant made complaint to defendants. The email Mark-DH shows that is in between the M&P defendant No.1 and the insurer and in it the M&P through insurer has demanded Rs. 31999/- which are equal to 50% of 63999/- from the complainant, same is the position of email Mark-DJ. So I find no force in the contentions of the learned counsel for the defendants that the complainant is a police holder of the insurer and she should institute the complaint against retailer or insurer or Huawei and same is hereby turned down.

The next contention of the learned counsel for the defendants is that the market value of the mobile phone was determined by the insurer Rs. 64000/- although capped value of the mobile was Rs. 58000/-, the claim of the complainant that its value was Rs. 45000/- or Rs. 44000/- to Rs. 48000/- is incorrect and is without any proof. On the other hand the contention of the learned counsel for the complainant is that the complainant purchased the mobile phone on 10.08.2016, after the passing of about 4-months on 11.02.2017 it accidentally damaged and at that its price at that time was Rs. 44000/- to 48000/- and not Rs. 64000/-, the record of the price was with the defendants, the defendants with held the said evidence, they did not produce the price list of said mobile phone in the evidence, they admitted in written statement that complainant gave quotations of said

prices of mobile, but these were of old mobiles, which is sufficient to prove that the price of the mobile phone was in between 44 to RS. 48000/- and not Rs. 64000/-, therefore, the complainant is liable to pay Rs. 22000/- towards the accidental warranty price of the mobile to the defendants. The above said evidence shows that neither the complainant nor defendants produced any rate list in the evidence, however I am fully agreed with the contention of the learned counsel for the complainant that it was the responsibility of the defendants to produce the rate list of the said mobile phone which was on 11.02.2017, which was also the product of the defendants. Since the defendants did not produce the said document in the evidence, therefore, in view of the above said I find no force in the contention of the learned counsel for the defendants that on 11.02.2017 when the mobile was accidentally damaged, its price was still RS. 64000/-, consequently I find no force in the said contentions of the learned counsel for the defendants and same is hereby turned down. However, since it is a dispute of a very small amount the mobile phone of the complainant is lying with the defendant from previous about more than 2-years, the defendants are ready to give new mobile in place of damaged mobile to the complainant in case the complainant pays 50% of Rs. 64000/-, therefore, in the light of the above said facts and circumstances

of the case and prices told by PWs to the defendants which are in between Rs.44000/- to Rs. 48000/- the complainant is directed to pay Rs.24000/- which is 50% of Rs. 48000/- to the defendant No.1 in this respect and the remaining claim of the defendants of Rs. 8000/- is hereby turned down.

12. The upshot of the above said discussion is that in view of the above said it is concluded that complainant has successfully proved her case against the defendants that the demand of the defendants with complainant / consumer was not reasonable and the complaint is hereby accepted as under:-

The perusal of the complaint shows that the complainant has prayed for redressal of his grievance. The above said finding of this court shows that the court has concluded that the complainant shall Rs.24000/- which is 50% of Rs. 48000/- to the defendants for receiving some new phone from the defendants, therefore, defendant No.1 is directed to receive Rs. 24000/- from the complainant and hand over to her a new mobile cell phone of same model to the complainant.

The perusal of section 31 (e) of PCPA, 2005 shows that it authorizes the court to direct the defendant to pay compensation to the consumer if the court is satisfied that product claimed against suffer from any of the defects specified in the claim or that any or all of the allegation contained in the

claim about the services provided are true, it shall issue an order to the defendant directing him to pay reasonable compensation to the consumer for any loss suffered by him due to the negligence of the defendant, therefore, in view of the above said the defendant No.1 who is a seller of a cell mobile phone of a foreign manufacturer u/s 2(h)(v) of PCPA, 2005 falls in the definition of manufacturer as well and on his behalf the retailer sold the mobile to complainant and received consideration money and upon complaint of complainant demanded 50% amount from complainant is directed to pay Rs. 10000/- as compensation to the complainant as well.

The perusal of section 31(g) of PCPA, 2005 shows that the court may also award actual costs including lawyer's fee incurred on the legal proceedings. Since in this case the complainant has knocked the door of court for redressal of her grievances, she delivered legal notices to the defendants for redressal of his grievances, the defendants did not listen to him, having no option she instituted the complaint before this court, defiantly on the said process she had spent huge amount, therefore, in view of the above the defendant No.1 is directed to pay Rs. 15000/- towards actual costs including lawyer's fee incurred on the legal proceedings to the complainant as well.

13. The upshot of the above said discussion is that the complaint of the complainant is hereby partly accepted and partly rejected and complainant is directed to pay Rs.24000/- which is 50% of Rs. 48000/- to the defendant No.1, defendant No.1 is directed to receive Rs. 24000/- from the complainant and hand over to her a new mobile phone set of same model. Moreover, defendant No.1 is directed to pay Rs. 10000/- towards compensation and Rs. 15000/- towards actual costs including lawyer's fee incurred on the legal proceedings to the complainant within 30-days of the passing of this order. File be consigned to the record room.

Announced:
02.10.2019

ABDUL HAFEEZ
District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi

It is certified that this order consists upon 28-pages. Each page has been dictated, read, corrected and signed by me.

District & Sessions Judge/
Presiding Officer
District Consumer Court
Rawalpindi