

**IN THE COURT OF MUHAMMAD KALEEM SHEIKH,
PRESIDING OFFICER / DISTRICT & SESSION JUDGE,
DISTRICT CONSUMER COURT, FAISALABAD.**

Claim No:	232/DCC-2008.
Date of Institution of Claim	10.06.2008.
Date of decision	16.02.2009.

MUHAMMAD UMAIR.

Vs.

M/s. NIAZI FLYING COACH etc.

CLAIM FOR RECOVERY OF DAMAGES /COMPENSATION Rs.3,71,000/-

U/S.13, 25 OF THE PUNJAB CONSUMER PROTECTION ACT,2005.

ORDER:-

1. Brief fact facts deciphering this case as narrated in the claim are that M/s. Niazi Flying Coach is rendering services to his Passengers at Faisalabad whereas claimant is a business man running a business of Mobile Phones under the claim and style of "Mr. Telecom" in Katchary Bazar, Faisalabad. On 13.05.2008, the claimant had to travel from Lahore to Faisalabad in connection with his business. He purchased a number of Mobile Phones from Lahore, the detail of which is provided in Para No.3 of the claim. The purchased Cell Phones were wrapped up in a Plastic Bag and the claimant reached at Niazi Bus Stand along with the afore said Bag on the said date. The Claimant purchased Ticket No.21 from Niazi Bus Stand at Lahore situated at Bakkar Mandi, Lahore for Bus No.1494 to be departed at 10:15 PM for Faisalabad. As the defendant No.3 of the said Bus did not permit the claimant to place his afore said Bag near the claimant's seat and directed him to place the same in the luggage Cabin of Bus as the defendant No.3 assured the claimant that he was responsible for the loss, if any. The defendant No.3 took the Cell Phones Bag and placed the same in the luggage cabin of the said Bus in presence of Nasir Mehmood. On arrival of the Bus at New Subhan Travels, Near Railway Station, Faisalabad the claimant demanded his luggage carrying Cell Phones from the defendant No.3 but it was conveyed to him in

presence of Muhammad Saqib PW that the Bag was lost. As the defendants have not returned the claimant's Plastic Bag carrying Mobile Phones valued at Rs.121,000/- despite demand, hence, he has lodged this claim for recovery of an amount of Rs.371,000/- as damages detailed in Para Nos. 3 and 7 of the claim along-with the prayer for ceasing the Niazi Flying Coach.

2. The defendants No.1, 2 and 4 have been proceeded ex-parte as none appeared for them on 04.07.2008. Whereas defendant No.3 has contested the claim by filing his statement of defence on the ground that the dispute of loss of the claimant's luggage arose at Lahore Bus Stand, that he had no knowledge about placing of the claimant's Hand Bag in the luggage box of the Bus but that the claimant returned the Ticket to the Booking Clerk there and received the fare, hence, he did not travel in the Bus of the Niazi Flying Coach, that, therefore, no questions arises about the defective services of the defendants for loss of the claimant's Hand Bag alleged to have contained Mobile Phones.

3. In view of divergent pleadings of the parties, as the matter needed evidence to resolve the above said controversial point, therefore, the claimant Muhammad Umair has got recorded his statement as PW-1 whereas he has produced Nasir Mehmood as PW-2 and Muhammad Saqib as PW-3 through their affidavits Ex.PW-1/1, Ex.PW-2/1 and Ex.PW-3/1, respectively. In his documentary evidence, the claimant has tendered receipt Ex.P-1, Mobile Invoice Ex.P-2, receipt dated 13.05.2008 Ex.P-3, receipt of A-Zee Mobile dated 13.05.2008 Ex.P-4, receipts reference Nos. 1578, 4056, 3417, 009935 as Ex.P-5 to Ex.P-8, Ticket of Bus No.1494 dated 13.05.2008 Niazi Flying Coach Time 03:15 PM Ex.P-9, postal receipt, Legal Notice ex.P-10. In rebuttal, Shahid-Ullah Bhatti appeared as Dw-1 through his affidavit Ex.DW-1/1, Burhan Aziz, Muhammad Asif and Shahid Mehmood got recorded their statements through their affidavits Ex.DW-2/1, Ex.DW-3/1 and Ex.DW-4/1, respectively.

4. After conclusion of evidence of the parties, I have heard both the sides at length and perused the record carefully and in-estimably.

5. From the evidence as produced by the parties above referred the only mootable point to be resolved is whether or not the claimant traveled in the Niazi Flying Coach through Bus No.1494 on 13.05.2008 departed from Lahore to Faisalabad at 10:15PM and that whether the claimant placed his Hand Bag containing Mobiles Phones of value of Rs.121,000/- in the luggage box of the said Bus on the direction of the defendant No.3. In this regard, Muhammad Umair, the claimant has categorically stated in his affidavit Ex.PW-1/1 that Nasir Mehmood PW-2 was present along-with him at the Bus Stand who came there to see him off. It has further been disclosed in the statement of the claimant that all the occurrence and narrated circumstances happened in presence of the said Nasir Mehmood PW. It also transpires from the statement of Muhammad Umair PW-1 that the luggage bag was found missing when he alighted from bus at New Subhan Travel at about 12:30 PM from said Bus and Muhammad Saqib PW-3 was also present at that time who came there to receive them. When the claimant demanded his luggage bag from the Conductor of the Bus (defendant No.3), there was exchange of hot words in between them. However, the Conductor assured the claimant that if he would convey the matter to the owner of the Company, he would pay him price of the missing luggage bag. On the next day, the claimant along-with Muhammad Saqib and Nasir Mehmood PW's went to the owner of the Company, namely, Azam Niazi who promised to return the luggage bag or its price within two days but later on he refused to do so. In documentary evidence, Ex.P-1 to Ex.P-8 are the receipts of the Mobile Phones purchased by the claimant from different shops at Lahore on 13.05.2008. Ex.P-9 is the crucial document showing that the claimant purchased Ticket for traveling from Lahore to Faisalabad on 13.05.2008 at 10:15 PM. Both the PW's Nasir Mehmood and Muhammad Saqib have fully corroborated the statement of Muhammad Umair claimant. There were cross-examined but nothing

could be elicited from them that might shake the veracity of their statements. There is nothing to show that the claimant or the above said PW's have any previous animosity with the defendants, therefore, they are deemed to be truthful witnesses having no shadow of doubt about the missing Bag from the defendant's Bus.

6. In rebuttal, the statements of the DW's including that of the defendant No.3 do not disclose that the claimant did not travel in the said Bus on the said date and time from Lahore to Faisalabad. Shahid-Ullah Bhatti DW-1 disclosed in cross-examination that at the time of placing the luggage in the luggage box of the Bus, copens are issued but no such copen of receipt of luggage Bag of the claimant has been produced by him. However, it transpires from statements of the DW's including that of defendant No.3 that there was some dispute in between the claimant and defendant No.3 about missing of the luggage bag at Faisalabad Bus Stand. Also, the defendant No.3 has been unable to produce any independent evidence showing that the claimant did not travel in the said Bus No.1494 from Lahore to Faisalabad as the witnesses produced by him are the employees of the Niazi Flying Coach Service / Bus Stand; therefore, they are interested witnesses.

7. The up shot of the above whole discussion is that, in view of cogent, coherent and confidence inspiring evidence as produced by the claimant in support of his version, the claim stands proved to my entire satisfaction.

8. However, as regard, the quantum of damages, it is consumer forum to decide. On the one hand, the claimant has been unable to produce any evidence with regard to business loss, mental torture, nervous shocks as such claim has not been coupled with physical injury to the claimant or any certificate from any psychiatrist about the claimant's illness or mental disorder, therefore, there is no liability for emotional distress and, on the other hand, under section 15 of the Punjab Consumer Protection Act, 2005 the service provider shall not be liable for any damages except a return of the consideration or a part thereof as the consumer

has not suffered any other damages due to defective and faulty services of the defendants.

9. For what has been discussed above, as the services provided by the defendants are faulty and defective, therefore, the claim is hereby accepted. The defendants shall pay an amount of Rs.121,000/- as value of lost Mobile Phones of the claimant and Rs.10,000/- as Legal Expenses incurred by the claimant in litigation. The defendants shall pay the above said amount i.e Rs.131,000/- to the claimant within a period of thirty days; otherwise they shall be dealt with U/S.32 of the Punjab Consumer Protection Act, 2005. With these observations, file be consigned to the record room after its due completion.

Announced
16.02.2009.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad.

Certified that this judgment consists of five pages, dictated, signed and corrected by me.

Muhammad Kaleem Sheikh,
Presiding Officer/
District & Session Judge,
District Consumer Court, Faisalabad.