

IN THE COURT OF EJAZ AHMAD BUTTAR,
DISTRICT & SESSIONS JUDGE / PRESIDING OFFICER,
DISTRICT CONSUMER COURT
FAISALABAD

Petition No776/10
Date of institution 7-11-09
Date of decision 7-6-10

Ahsan Zia vs. EFU Insurance Co etc

PETITION FOR RECOVERY OF RS.16, 68,718/-
AS DAMAGES FOR DEFECTIVE SERVICE

Order

Petitioner filed this claim against EFU Insurance Co and Bank Alfalah claiming the suit amount as compensation/damages on account of respondents' defective service. Petitioner contended that on 20-7-06 he purchased a master highland truck through Bank Alfalah on down payment of Rs.1,50,000/-(including insurance amount) against monthly instalment of Rs.11,337/-. The petitioner first verbally demanded documents of vehicle from respondents and then made such demand in writing on 3-4-08 but still the respondents did not provide the requisite documents to petitioner. The petitioner kept on paying monthly instalments regularly for 14 months but the driver to whom he had let the vehicle on daily rent, misappropriated the vehicle. A criminal case was lodged by the petitioner. On recovery of vehicle, petitioner received it on superdari in the first week of June 2009. As the petitioner allegedly suffered a lot for

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about two years on account of respondents' alleged defective service, he claimed the suit amount from them but they did not redress his grievance despite issuance of legal notices, hence, this claim.

2 Petition was contested by respondents on the objections, inter alia, that neither the petitioner is a consumer nor this court is competent to adjudicate on parties' controversy.

3 Arguments heard and record / case law perused.

4 Under the provisions of Punjab Consumer Protection Act 2005, only a 'consumer' can sue the manufacturer of faulty goods or provider of defective service. Therefore, first of all petitioners' qualification as a 'consumer' has to be seen which is not there. It is would appear from record that petitioner purchased the suit vehicle for commercial / business purpose vide para 10(1) of petition wherein petitioner claimed that he had to suffer loss in business for 22. Petitioner's not being a 'consumer' is also evident from the contents of FIR no.115 wherein he claimed that he had let the vehicle on daily rent of Rs.500/-. Both of these facts, which are rather admissions on the part of petitioner, are sufficient to show that the petitioner is not a 'consumer' himself – instead, he had purchased the vehicle for commercial purpose and not for personal use to earn

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livelihood as self employed person. Attention is also drawn to sub section 2-c (i) of the Punjab Consumer Protection Act 2005 which has defined term of 'consumer' as under :-

'Consumer' means a person or entity who

- (i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for re-sale or for any commercial purpose; or
- (ii) hires any services for a consideration and includes any beneficiary of such services

Explanation:

For the purpose of sub clause I, commercial purpose does not include use by a consumer of products brought and used by him only for the purpose of his livelihood as a self employed person.

When petitioner's status is looked upon in the light of consumers definition as above, it would emerge that he does not fulfil qualification of a 'consumer' as neither he purchased the truck for personal use nor to earn livelihood as a self employed person since he had let it on daily rent of Rs.500/-. Petitioner has also defaulted in paying 32 monthly instalments; instead of receiving insurance claim from respondent no.1 or going to Insurance Tribunal and

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settling accounts with Alfalah Bank, he approached this court which has got no jurisdiction to adjudicate on parties controversy there being no relationship of 'consumer' and 'service provider' between the parties.

5. For what has been discussed above, the petition be returned to the petitioner for presentation to court / forum of competent jurisdiction, if advised so. After returning the petition, if moved by the petitioner, file be consigned to record room after completion.

Dated 7-6-10

Ejaz Ahmad Buttar,
Presiding Officer,
District Consumer Court,
Faisalabad.

Certified that all the four pages of this order have been corrected and signed be me.

Dated 7-6-10

Presiding Officer,
District Consumer Court,
Faisalabad.