

IN THE NAME OF ALLAH ALMIGHTY, THE MOST GRACIOUS AND THE MOST MERCIFUL.

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

(Claimant)	(Defendants)
Claim No:	80//DCC-2008.
Date of Institution of Claim	11.02.2008
Date of decision	25.04.2009.

Muhammad Moeed s/o Muhammad Latif
 Vs.
 Director Plum Qingqi etc

Application 4, 5,6,7,8 Consumer Protection Act 2005, recovery of the compensation/damages Rs. 271063/-

O R D E R:-

1. Brief facts discerning and deciphering this case as disclosed from contents of the claim, in nutshell, are as under;
2. The claimant purchased the Plum Qingqi/Auto Rickshaw CNG No-FSO-8769 Model.2006 on 27.10.2006, as per terms and conditions of the President Rozgar Scheme. The claimant paid an amount of Rs. 21500/- in advance and made further payment of Rs.2915/- for completion of other

documents alongwith Registration fee. The claimant was delivered the Rickshaw from the Asad Motors Millat Chowk Sheikhupura Road Faisalabad after sanction of the Bank in lieu of consideration Rs. 190398/- in installments alongwith profit of 6% mark up. Plum Qingqi Rickshaw Company promised free service and replacement of defective spare parts for a period of 6 months or travelling of distance of six thousand Kilo Meters as per warranty. However, the Rickshaw was manufactured from defective material hence, break down, clutch plate, ring piston, center cross, and back gear defects came to the surface after only a few days on plying it on road. For repairment of the Rickshaw, the claimant took the Rickshaw to the warranty workshop of the Plum Qingqi Liaqat Autos Nar Wala Road Faisalabad nominated by the Company for removal of the said defects. However, after such repair, the problems in the Rickshaw increased day by day as it used to stop due to over heat never to start again. All such complaints in the Rickshaw were made to the nominated warrantee workshop of the contesting defendant but of no avail. The claimant also submitted an application before the District Nazim Faisalabad on which the District Nazim constituted an inquiry committee in pursuance of which the Regional Transport Authority and Motor Vehicle Examiner checked the Rickshaw and reported that the Rickshaw was manufactured of defective material. On the basis of such report District Nazim Faisalabad held responsible the Plum Qingqi for manufacture of defective Rickshaws and directed it to redress the grievances of the claimant but in vain. Accordingly, the claimant has lodged this claim for recovery of an amount of Rs. 279832/- from the Plum Qingqi Rickshaw Company due to its defective and faulty products alongwith down payment expenses u/s 25 Punjab Consumer Protection Act 2005, after delivery of legal notice.

3. The defendants No.2 has contested the above said claim by filing his statement of defence simply for the reason that he is proforma defendant and no relief has been sought against him that, therefore, the claim is liable to be dismissed to his extent. However, the defendant No. 1 has also vehemently opposed the claim through his separate written statement, interalia, on the grounds that the claim is badly time barred u/s 28 (4) of the Punjab Consumer Protection Act 2005, that the claimant does not fall within the definition of “Consumer” as defined in the Act ibid, that the claimant has

approached this court with unclean hands as he is defaulter of installments to the Bank and he has lodged this claim to avoid the payment of such installments and that the material and engine of the Rickshaw is technically sound as there is neither any manufacturing nor any designing defect in it that, therefore, the claim may be dismissed as the warranty period has also expired.

4. As the claim involved mixed question of law and facts to be resolved after production of evidence of the parties hence, the claimant got recorded his statement as PW-2 through his affidavit EX-PW2/1. whereas he produced Muhammad Saleem PW-1. In his evidence in rebuttal, the defendant No. 1 has produced Liaqat Ali Proprietor DW1, Muhammad Munir Qasim as DW2 and Abdul Moeed Incharge Service Department Plum Qingqi as DW3 through their respective affidavits EX-DW1/1, EX-DW2/1 and EX-DW3/1, in his documentary evidence, the defendant No. 1 tendered the documents EX-R1 to EX-R11 and of Mark "A" to "D".
5. After conclusion of evidence of the parties, I have heard learned counsel for the parties at length, perused and scrutinized the record carefully and meticulously.
6. During the course of his augments Mr. Ghazanfar Haider Pasha Advocate learned counsel for the claimant has vehemently argued that the defendants have provided faulty product to the claimant having so many manufacturing faults in the Rickshaw purchased by the claimant from them as is evidenced from the statement of the claimant through his affidavit EX-PW2/1, that the claimant including other affectees also agitated in the public streets for providing him the defective Rickshaw in President Roz Gar Scheme, that the Faisalabad CNG Qingqi Rickshaw Owners Association also submitted application before the District Nazim Faisalabad to constitute committee including Secretary Regional Transport Authority and Motor Vehicle Examiner Faisalabad, Muhammad Asif Wakeel, Vice President of National Bank of Pakistan Faisalabad and Dr. Muhammad Yaseen President Qingqi Rickshaw Association Faisalabad, that the report vide number 537/PSO dated 16.04.2008, supported the claimant's stand that his complaint regarding Technical faults in the CNG Rickshaw were genuine, that the claimant being poor citizen of the country knocked at the doors of the relevant Authorities but his grievances have not so far been redressed

that therefore, he has concluded his arguments that the claim may be accepted under the circumstance that no satisfactory and cogent evidence has been produced in rebuttal, thereof. Conversely Rao Tahir Shakeel Advocate learned counsel for the defendant No.1 has strenuously controverted the arguments of learned claimant's counsel raising objections on legal as well as factual planes with the contentions that the claimant is not a consumer in stricto sensu, that the claim is barred by Law of limitation as enumerated in section 28(4) of the Punjab Consumer Protection Act 2005, that no manufacturing defect in the Rickshaw has been pointed out by the claimant during his evidence which might have been corroborated from independent evidence, and that the defects in the Rickshaw as lime lighted by the claimant happened to occur due to the claimant's own negligence, The learned contesting defendant's counsel has prayed for dismissal of the claim.

7. Prior to reach a safe conclusion in this case, having complexities of law and facts, it would be pertinent critically to appraise the evidence as produced by the parties as under:
8. The claimant PW has stated on oath through his affidavit EX-PW2/1 that he purchased the Qingqi Auto Rickshaw CNG from the contesting defendant through the National Bank of Pakistan under the President Roz Gar Scheme in lieu of consideration, that the warranty period for the Rickshaw was for a period of six months or the coverage of distance of 6000/KM during which the repairment or change of defective spare parts was to be free, that as the Rickshaw was manufactured from the defective material, therefore, the defects like starting problems, break down, clutch plate defect and defects in ring piston, center cross, and back gear came to the surface for which he took the Rickshaw to the Plum Qingqi warranty workshop at Liaqat Autos Nar wala Road Faisalabad, that each time the Rickshaw was handed over to the claimant with the promise that there would be no fault again but that the defects again occurred after a few days only. The claimant was subjected to pithy cross examination by the learned counsel for contesting defendants but nothing could be elicited from him that might be helpful for the purpose of the contesting defendant. Muhammad Saleem PW-1, has also corroborated the claimant's statement through his affidavit EX-PW1/1.

9. In rebuttal, the contesting defendant has produced three witnesses through their affidavits. It appears from the statements of the above said DW's that the claimant obtained the Plum Qingqi CNG Rickshaw through the National Bank of Pakistan at Faisalabad under the "President Roz Gar Scheme", that the Company also provided manual of instructions in vernacular to the claimant but that the claimant did not maintain the vehicle according to these instructions that hence, the major faults in the Rickshaw occurred. From cross examination of these witnesses it does not appear that the contesting defendant has no concern with the manufacturing of the Rickshaw which is separate department and that they never examined Auto Rickshaws including the claimant's Rickshaw. It also appears from statement of DW1 that the claimant has been visiting for repair of Rickshaw to him and for registration of complaints at various forums. that the defects in the Rickshaw appeared due to claimant's negligence for not following the instructions in the booklet provided to him by the company. From statements of the above said witnesses, it is crystal clear that they are serving under the Plum Qingqi Company. In the defendant's documentary evidence, the warranty claim reports vide EX-R7 to EX-R9, have been adduced showing following faults in the vehicle in dispute;

Sr NO	Documents	Date of Purchase	Date of defect	Claim No	Date of Registration	Meter Reading	Date of completion of claim
1.	EX-R7, electrify change	27.10.06	04.12.06	25430	04.12.06.	4581	04.12.06.
2	EX-R8, clutch plate change	27.10.06.	05.12.06	25433	05.12.06.	4830	05.12.06.
3	EX-R9, wheel balancing bearings, salander ring, wall seal, engine pipe	27.10.06	06.12.06	25435	16.12.06	5117	20.12.06

10. The contesting defendant has also produced the Plum Qingqi, Ref NBP/PQM/0014 dated 19.01.07 EX-R10, Plum Qingqi Ltd Region wise NBP Karobar detail EX-R11, letter HOD Services Division Plum Qingqi Ltd as Mark "A" and "B", copy of affidavit as Mark "C" and "D".

11. From the recitals in the pleadings of the parties as well as the evidence on record through their critical appreciation, it is crystal clear to my entire satisfaction that;

- a. Statement of the claimant in corroboration of his case is convincing, confidence inspiring, cogent, and coherent as he has synchronized the contents of his claim in toto. The learned counsel for the contesting defendant could not be able to agitate the veracity of the witness even through the weapon of cross examination;
- b. The witnesses produced by the defendants are interested as they are payees of Plum Qingqi CNG Auto Rickshaw hence, their statements are not confidence inspiring, the witnesses being interested;
- c. It is very strange to note that the Chief Executive of the Company defendant No.1 has not dared to appear in rebuttal of the claimant's case as he has also not produced any responsible officer of the company;
- d. From the documents as produced by the contesting defendant himself vide EX-R7 to R-11, it transpires that the manufacturing defects in the vehicle started to occur soon after its purchase by the claimant and such defects were serious in nature;
- e. There is nothing on record to believe that the defects in the Rickshaw were due to the negligence of the claimant for proper non-maintenance under the circumstance that on perusal of documents above referred defendant's own faults above referred speak to the contrary;
- f. The District Nazim Faisalabad vide No. 537/PSO dated 16.04.2008, although not produced in evidence due to the negligence of the claimant's counsel but I have taken a judicial notice of it, wherein he fully supported the Motor Vehicle Examiner Faisalabad and made remarks that the National Bank of Pakistan should refund the amount of installments already paid by the lessee under President Roz Gar Scheme and to take back substandard vehicle;

12. From such facts and circumstances as enumerated, it is said with clarity that the major defects in the vehicle started to occur in it soon after its delivery to the claimant. Apart from the legal objections as raised by the learned defendant's counsel on factual plane, the controversy has been narrowed down to the critical issue whether the defects in the Rickshaw were due to the negligence of the contesting defendant, the manufacturing company or the defects started to flow in due to the contributory negligence of the claimant for its non maintenance under the booklet of manual for maintenance EX-R2-3.

a. From a plain reading of the language employed by the legislature to the clause expressly defining "defect" in the Act, it appears that the clear intent was to give the widest amplitude to the word "defect" pertaining to goods for the purpose of this statute. This definition does not seem to confine the word "defective" within any narrow or technical limitations. On the other hand, it is deliberately couched in the widest horizon of there being any fault, imperfection or shortcoming casting its net so wide so to bring within its import every deviation for requirements spelt out in the definition related to the quality, quantity, potency, purity or standards of goods. Therefore, the definition of "defect" is intended by the legislature to be cast in the widest terms and consequently has to be liberally construed. From the evidence keeping in view such definition of "defect" as laid down in the Act, it is found that there is relevant evidence on record adduced from either side that as soon as the Rickshaw was plied on road by the claimant after its delivery to him from the contesting defendant, major defects came to the surface to the astonishment of the claimant therefore, he had to take it to the warranty dealer again and again. There is nothing on record to believe that the claimant has used the Rickshaw against the instructions as delineated in the Warning Book as the claimant appears to have maintained the Rickshaw to his best efforts in accordance with the instructions as laid down in the same. Therefore, as

a misfortune of the calamity, the defects in the Rickshaw could not be avoided by the claimant despite his best efforts to do so hence, such responsibility squarely falls and devolves upon the contesting defendant as he was presumed to maintain the standard of quality being a multinational Company. Seen from an other angle, admittedly, the malfunctioning of the Auto Rickshaw started during the period of warranty and the failure of the opposite party to rectify such malfunctioning amounts to deficiency in service, hence, the contesting defendant is responsible for such malfunctioning.

- b. The upshot of the above whole discussion is that the claimant has proved his case up to the hilt, therefore, I have no hesitation to reach an irresistible conclusion that he is entitled to be damnified for providence to him the defective Rickshaw and defective services by the contesting defendant No. 1.
- c. At this juncture, it would be pertinent to discuss the controversial points as raised by the learned counsel for contesting defendant during his arguments, one by one, as under;

Fistly, the learned counsel for contesting defendant is not correct to argue that the claimant is not “consumer” as under the explanation of section 2 (C) of Punjab Consumer Protection Act 2005, “Consumer” means a person who buys or obtains on lease any product for consideration but does not include any person who obtains such product for any commercial purpose but for the purpose of sub clause 1(i), “commercial purpose” does not include use by the consumer or product bought and used by him only for the purpose of his livelihood as self employed person. As the claimant is self employed person within the above said definition hence, his claim may not be thrown away on this score;

Secondly, The learned contesting defendant's counsel has stressed that the claim is barred by law of limitation as laid down in Section 28(4) Punjab Consumer Protection Act 2005, having been lodged after a period of 60 days. However, such contention is not sustainable because the claimant purchased Auto Rickshaw for self employment to earn his livelihood and in such circumstance, defects could not be found over time as several repairs of the Rickshaw were carried out but defects could not be removed and warranty period was extended. The claim having been brought within a period of one year is within limitation under such circumstance as the warranty period has been ignored by the contesting defendant him self;

Thirdly, the contention of learned counsel for defendant that there is no manufacturing defect in Rickshaw is ruled out as there is overwhelming evidence on record as discussed above that the claimant was made to agitate against such defects on various forums and even the District Nazim, the highest hierarchy in the District, accepted his demands for redressal of his grievances;

Fourthly, while critically appreciating the evidence recorded from both sides, I could not find the claimant's negligence in the maintenance of Rickshaw under the instructions provided to him in the booklet by the contesting defendant such contention is hereby repelled under the above said scenario and it is hereby opined that many consumers have suffered due to callous attitude of the public sector agencies. All these departments and the agencies have elaborate redressal system incorporated in to their working but now they have also been answerable to the consumer after introduction of Punjab Consumer Protection Act 2005. Not only that due to shortage of time but also as

necessity for livelihood, the claimant purchased the vehicle without actually assessing its quality. Under such circumstance, as the technicalities pointed out by the counsel for contesting defendant should not thwart the way of justice, I sanguinely feel that the claimant's grievances should be redressed.

13. For what have been discussed above. I hereby accept the claim and make the following order;
 1. The contesting defendant No.1 shall now return the total amount deposited to him by the claimant through the National Bank of Pakistan Faisalabad;
 2. The claimant shall return the defective product to the contesting defendant through the National Bank of Pakistan Faisalabad on receipt of the cheque of the amount above referred from him;
 3. The contesting defendant shall also pay an amount of Rs. 20000/- as damages due to loss of utility of the product during the period it was kept by him;
 4. The contesting defendant shall also pay an amount Rs. 10000/- to the claimant as legal expenses as incurred by him during litigation.
14. The order shall be complied within a period of 30 days otherwise the matter shall be dealt u/s 32 (2) of the Punjab Consumer Protection Act 2005.

Announced
25.04.2009.

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

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

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