

**IN THE COURT OF MUHAMMAD SARFRAZ AKHTAR  
DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER,  
DISRICT CONSUMER COURT MANDI BAHA-UD-DIN**

Case No.	13 of 2015
Date of institution	13.02.2015
Date of decision	15.05.2018

Shamshad Hussain son of Muhammad Roshan, Caste Gondal, resident of Wasoo Tehsil & District Mandi Baha-ud-Din.

Vs.

1. Toyota Garden, L-10 Gulberg-III, Ferozepur Road, Lahore;
2. Mr. Mubashar Umar, General Manager Sales, Indus Motors, Plot No. 9005, Qaid Abad, Landhi, Karachi;
3. Muhammad Akram son of Bahadar Khan, Caste Jutt Gondal, resident of Wasoo Tehsil & District Mandi Baha-ud-Din.

**Muhammad Sarfraz Akhtar**  
DISTRICT & SESSIONS JUDGE  
Presiding Officer  
District Consumer Court  
M.B.Din

15.5.2018

**ORDER:**

The stance of claimant, Shamshad Hussain, is that Muhammad Akram (defendant No.3) pretended himself as sub-agent having nexus with Toyota Garden Motors Pvt. Ltd. (defendant No.1), a dealer of Indus Motor Company Ltd. The claimant got booking of Toyota Corolla GLi Model 2015 vide PPO No. 2719287 by making down payment of Rs.500000/- whereafter remaining payment Rs.1270500/- vide Pay Order No. 2473584 dated 29.10.2014 and Rs.30000/- vide Pay Order No. 2473585 dated 29.10.2014 was made. At the time of placing order it was told to the defendants that the vehicle was to be given as gift by the claimant to his sister at the time of marriage and it was got assured by the defendants that vehicle shall be delivered in the first week of January 2015 whereupon the marriage was fixed in the first week of said month. Despite

the effect that since remaining payment has not been made the delivery of vehicle is being postponed till 15 February 2015. Due to failure of delivery of vehicle in time the claimant was embarrassed and suffered mental torture effecting his reputation and social status. Legal notice was issued but the grievance of the claimant was not redressed. The claimant claims compensation of Rs.1000000/-

2. The complaint was initially filed before District Consumer Court Gujrat. After establishment of District Consumer Court at Mandi Baha-ud-Din the same was transferred to this Court. The record reflects that Defendants No. 1 & 2 submitted written statement controverting the assertions of the claimant particularly status of defendant No.3 as sub-agent. However, after submission of written statement whereas Defendant No.3 after appearance in person were got absent and were proceeded against ex-parte on 16.03.2016. Claimant thereafter on the same day produced his oral evidence wherein he turned up as PW.1 and produced Mazhar Iqbal as PW.2.

3. After transfer of the case to this Court notices were issued and Defendant No.1 and 3 submitted applications for setting aside of ex-parte order those applications were allowed on 12.06.2017. Defendant No.3 then submitted written statement wherein entire assertion of the claimant was conceded by him. After submission of conceding written statement the defendant No.3 kept on appearing till 04.12.2017 whereafter he never turned up.

4. Cross examination on claimant (PW.1) was conducted on behalf of Defendant No.1 whereas PW.2 was given up by the claimant. After completion of claimant's evidence opportunities were given to Defendant No.1 for production of evidence but no evidence has been produced. As the opportunity for production of evidence was not availed by Defendant No.1, the complaint was then fixed for final arguments.

5. Arguments heard. Record perused.

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6. Mr. Mumtaz Ahmad Sandhu Advocate learned counsel for claimant argued that Provisional booking order 27.10.2014 Mark-F and remaining payments through Mark B & Mark C dated 28.10.2014 and receipts of acknowledgment Mark D & E dated 29.10.2014 reflect that entire payment was made and nothing was due and Letter dated 9.1.2015 regarding nonpayment Ex.P3 was issued against the facts whereafter Legal Notice Mark A dated 21.1.2015 was issued. Further maintained that reply Ex.P4 dated 26.1.2015 was internal matter of Toyota just to evade liability.

7. Rao Qasim Ali Khan Advocate learned counsel for Defendant No.1, on the other hand maintained that although there is no oral evidence on behalf of Defendant No. 1, but this is not the case wherein any adverse order merely on this ground can be passed. Further maintained that no doubt letter dated 09.01.2015 Ex.P3 was issued but in view of reply of the claimant the mistake was rectified and the documents available on record clearly indicates that delivery of the vehicle was made in January 2015 and there is no violation on the part of Defendant No.1.

8. Material brought on record by the adversaries requires analysis separately with respect to each of the defendants.

9. Mark-F is photocopy of Provisional Booking Order that is dated 27.10.2014 issued by the Defendant No.1 to the claimant. Copy of the same bearing signature of the claimant has also been annexed with written statement of Defendant No.1. In this order in the relevant column of month of delivery "January 2015" is mentioned. Merely month is mentioned and no specific date in this respect has been mentioned. Ex.P.4 and Mark-G reflect that vehicle was dispatched by the Indus Motors Company Ltd on 22.01.2015. In addition to this copy of Invoice as well as Sales Certificate bearing Sr. No. A154714 dated 22.01.2015 and copy of Permanent Outward Gate Pass dated 31.01.2015 is available on file those were annexed with the written statement by the Defendant No.1. Above all copy of Delivery Acceptance

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letter bearing No. 3467 dated 31.01.2015 bearing signature of the claimant is also available with the written statement of Defendant No.1 that reflect that it was generated at 5:07:30PM and vehicle was handed over to claimant. All these documents cannot be overlooked or kept aside especially when neither in the complaint nor in the affidavit Ex.P1 as well as in cross examination actual date of receipt of vehicle was mentioned by the claimant. In this scenario these documents reflect that vehicle was delivered in the month of January 2015 and prima-facie there is no violation of any commitment to the extent of Defendant No.1.

10. Ex.P3 is the letter dated 09.01.2015 issued by Defendant No.2 wherein nonpayment of balance amount on the part of claimant was maintained. Evidently, upon receipt of letter/notice of claimant letter Ex.P.4 was issued by Defendant No.2 intimating delivery of vehicle to Defendant No.1. Both these letters show that even if there was any incorrect assertion in Ex.P.3 that stand rectified in Ex.P4 especially when other documents reflect delivery of vehicle to the claimant on 31.01.2015. As such, there appears no violation of any term contained in Provisional Booking Order Mark-F even to the extent of Defendant No.2.

11. Now coming to case of claimant to the extent of Defendant No.3, the stance of claimant was that Defendant No.3 was sub-agent of Defendant Company. This assertion has been controverted by Defendant No.1 and 2 in their separate written statements. Even the claimant could not bring any material on the record with respect to nexus of Defendant No.3 with Defendant No.1 and 2. In absence of any material in this respect no liability of any commitment of Defendant No.3 with the claimant can be shifted to Defendant No.1 and 2.

12. As mentioned above Defendant No.3 while appearing in person and submitting conceding written statement has conceded entire claim of the claimant. In view of admission on the part of Defendant No.3 contained in his written statement and in

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absence of any material establishing any nexus of Defendant No.3 with Defendant No.1 and 2 as sub-agent, it can safely be concluded that Defendant No.3 falsely pretended himself as sub-agent of Defendant No.1 and 2. On the basis of his false status not only Defendant No.3 defrauded the claimant but he also put Defendant No.1 & 2 in this litigation for no fault at their part. To the extent of this misrepresentation and fraud committed and conceded by the Defendant No.3, remaining defendants i.e., Defendant No. 1 & 2 are at liberty to avail remedy before proper forum in accordance with law against Defendant No.3.

13. In view of the above, there being no fault or violation of Provisional Booking Order on the part of Defendant No.1 and 2 and delivery of vehicle in the month of January 2015, the claim of claimant to their extent is left with no force and accordingly stands dismissed.

14. In the above mentioned scenario, the loss of reputation or social status if suffered by the claimant that was not due to the Defendant No.1 or 2. Rather it was due to Defendant No.3. As such, to the extent of defendant No.3 keeping in view his conduct mentioned supra as well as his conceding written statement it is a fit case wherein proper compensation should be granted to the claimant. An amount of Rs.1000000/- has been claimed as compensation by the claimant. Although claim of the claimant has been conceded by the Defendant No.3 yet the amount claimed appears to be excessive. Needless to mention that wherever compensation or damages are demanded that must be appropriate and keeping in view facts and circumstances of transaction in question and product which was sold. Considering the facts of this case the appropriate compensation for claimant is Rs. 200000/- (two lacs) that is to be paid by Defendant No.3 to the claimant.

15. Therefore, in terms of section 31 of the Act, I issue an order and direct Defendant No.3 to make payment of Rs.200000/- (two lacs) to the claimant within fifteen days from today. In case

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of failure to comply with the order, the Defendant No.3 shall have to face the consequences mentioned in section 32(2) of the Act *ibid*. Copy of the order be provided to the claimant and contesting Defendant No.1. whereas copy to Defendant No.3 shall be dispatched by the Registrar of this Court in line with Rule 17 of the Punjab Consumer Protection Rules, 2009. The Registrar of this Court shall transmit copy of this order for the purpose of Rule 25 of the Rules *ibid*. Order accordingly. File be consigned.

Announced  
15.05.2018.

  
(**Muhammad Sarfraz Akhtar**)

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din

Certified that this Order consists of six (06) pages and each page has been dictated, read, corrected and signed by me.

Dated: 15.05.2018



  
(**Muhammad Sarfraz Akhtar**)

District & Sessions Judge/ Presiding Officer,  
District Consumer Court Mandi Baha-ud-Din