

IN THE COURT OF CHAUDHARY ABDUL QAYYUM

PRESIDING OFFICER DISTRICT CONSUMER COURT RAWALPINDI

Haji M. Bashir and two others V/s *Yasoob Travels etc.*
(Claimants) (Defendants)

CLAIM U/S 25 OF THE PUNJAB CONSUMER PROTECTION ACT,

2005 FOR THE RECOVERY OF RS.5,97,000/-

JUDGEMENT

Facts relevant for the disposal of this claim are that on 22.02.2010 claimants filed the claim in this court stating therein that claimants no. 1 and 2 made program for the performance of "Umrah" and for that they authorized claimant no. 3 to make arrangements. It was further averred in the claim that claimant no. 3 hired the services of defendants for the performance of "Umrah" of claimants no. 1 and 2 and in that regard a deal was arrived between claimant no. 3 and defendant no. 1 according to which claimant no. 3 paid an amount of Rs. 1,26,000/- to defendant no. 1. As per agreement reached between the parties defendant no. 1 was to provide transportation and accommodation facilities at Makha and Madina. It was further stated in the claim that defendant no. 2 was an agent of defendant no. 1 which was responsible to provide the agreed facilities to claimant no. 1 and 2 during "Umrah" at Makha and Madina. It was further added in the claim that defendants provided substandard facilities to the claimant no. 1 and 2 which were faulty and defective. It was specifically stated in the claim that defendants provided defective and faulty services / accommodation at Makha but failed to provide accommodation at Madina Munawara and transportation facilities from Madina to Jadda airport which resulted into mental agony and torture and financial loss as well to them. According to averments of the claim claimants no. 1 and

2 stayed at Madina at their own expenses and paid a hotel bill of 2160/- Riyal (Rs. 50,000) and also incurred 300 Riyal (Rs. 7000/-) as transportation expenses during performance of "Umhra". According to claimants they sent two legal notices to defendants for redressing their grievances but they did not response. Claimants prayed for the recovery of Rs. 5,57,000/- as damages, expenses for accommodations and transportation, counsel's fee and expenses for litigation.

2. On court notice defendants put appearance and filed written statement. They denied averments of claim and stated the allegations of the claimants as false and frivolous. Territorial jurisdiction of the court was also challenged. On facts they stated in their written statement that they provided all the facilities to the claimants no. 1 and 2 in Saudi Arabia during "Umrah" to the best of their ability and did not violet any term of the agreement. They prayed for the dismissal of the claim with cost.

3. Out of pleadings of the parties following issues were framed.

Issues

I. Whether this court lacks territorial jurisdiction to adjudicate upon the matter? OPD.

II. Whether the claimants are estopped by their words and conduct to file the claim, if so, its effect? OPD.

III. Whether the claim is false, frivolous and based on malafide, if so, whether the defendants are entitled to be awarded compensation from the claimants? OPD.

IV. Whether the defendants provided defective and faulty services to the claimants in Saudi Arabia? OPC.

V. If issue no. 4 is proved affirmative, whether the claimants are entitled to be awarded compensation from the defendants? OPC.

VI. Relief.

4. *Parties led their evidence in support of their respective contentions. Claimant no. 3 Maj. Ghulam Ali appeared as P.W-1 who filed his affidavit Ex. P-1. Claimant no. 1 appeared as P.W.2 and filed his affidavit Ex. P-4. In documentary evidence agreement Ex. P-2 and receipt of hotel "DAR TALHA" Ex. P-3 were filed. In rebuttal M. Zahid Saleem Khan appeared as D.W-1 and produced his authority letter D.A , affidavit Ex. D.B, receipt of booking AL-LULUA HOTEL Ex. D.C ,receipt of booking ABEER PALACE hotel Ex. D.D and hotel receipt Ex. D.E.*

5. *Counsel for the parties advanced their arguments. I perused the record and evidence of the parties through their able assistance. My issue wise findings are as under:-*

FINDINGS

ISSUES NO. 4 AND 5

6. *Both issues no. 4 and 5 are main issues and interlinked, therefore, the same are discussed and decided together. The case of the claimants is that claimant no. 1 and 2 had hired the services of defendants to provide accommodation and transportation during "Umrah" at Makha and Madina in which they failed to provide the same according to the standard. It has further been asserted by the claimants that the services provided to them by the defendants during holy journey were faulty and defective. In order to prove their contentions they produced the oral as well as documentary evidence mentioned in the earlier part of this judgment. Both the afore mentioned issues were to be proved by the claimants. I have carefully perused their evidence on the subject. Nevertheless defendants provided accommodation to the claimants at Makha which claimants no. 1 and 2 availed according to the statement of PW-1 and PW-2. During cross examination PW-1 who is attorney of the remaining claimants, admitted this fact. Claimant no. 1 Haji Muhammad Bashir appeared as PW-1 and admitted in cross examination that he and his wife claimant no.2*

stayed in the hotel at Makha provided by the defendants. Therefore, from the above said evidence it stands established that during the stay of claimants no. 1 and 2 at Makha defendants provided accommodation to them. As for as the allegation of claimants regarding defective and faulty services in the hotel at Makha are concerned, I have perused the affidavit Ex. P-4 and the cross examination of PW-2. Although PW-2 generally stated about the substandard services of the hotel provided by the defendants at Makha but no specific proof regarding substandard services was produced except mere oral assertion. From the perusal of averments of the claim as well as evidence it transpires that the main grievance of the claimants is that defendants failed to provide the transportation facility from Makha to Madina and from Madina to Makha and Jadda airport as agreed. Similarly their second grievance is that the defendants did not provide accommodation / hotel facility at Madina for which they had to pay according to legal notice, Rs. 57,000/- from their own pocket. On both these points, I have perused the evidence of the parties. According to affidavit Ex. P-4 of PW-2 representative of defendants informed him that at Madina accommodation would be provided in "ABEER" hotel during their stay. He further deposed that when he and his wife visited the said hotel after reaching Madina hotel management informed them that the booking was on chance from 17.09.2009 to 25.09.2009, whereupon they stayed at "DAR TALHA" hotel at their own expenses. In this regard they produced payment receipt of said hotel Ex.P-3. Despite cross examination defendants failed to bring anything on record which negated the claimants' contentions regarding non provision of accommodation at Madina. During the course of arguments learned counsel for the defendants have drawn my attention to Ex. D.D which according to him was booking receipt at "ABEER PALACE". I have perused Ex. D.D and found that it is not a payment receipt. I have no reason to disbelieve the testimony of PW-2 whose statement is the only direct piece of evidence on the subject. He is the

right person who could narrate the facts and events happened during their stay at Madina. Defendants have failed to rebut his narrations regarding non provision of accommodation to the claimants at Madina. Similarly they have failed to rebut the contentions of the claimants regarding non provision of transportation facility to them from Makah to Madina and Madina to Makha as well as Jadda airport which was their responsibility. From the above said discussion it stands proved that defendants provided defective and faulty services to the claimants no. 1 and 2 during the performance of "Umrah".

7. *After holding and deciding issue no. 4 in favour of claimants it is yet to be determined whether the claimants are entitled to compensation and if so, at what rate. According to the legal notice claimants paid Rs. 50,000 (2160 Riyal) in the hotel at Madina and Rs. 7000/- (300 Riyal) as transportation expenditures from their own pocket. I have already highlighted upon these expenditures in the earlier part of this judgment. The claimants have further claimed Rs. 2,00,000/- as damages for mental agony etc. Although due to the provision of defective and faulty services of the defendants the claimants had to undergo from mental agony etc for which they are entitled to get damages from the defendants, however, I fix it equal to the amount of Rs. 57,000/- which the claimants paid from their own pocket. In addition to this the claimants have also claimed Rs. 20,000/- as counsel's fee. Although in this regard neither any certificate from the counsel was produced nor his statement was brought on record during evidence, however, the counsel was engaged by them who appeared and conducted the case. Therefore, by applying rule of thumb I fix the counsel's fee Rs. 10,000/-. The next amount claimed by the claimants is Rs. 2,80,000/- under the head of expenditure for persuing the case. I have perused the evidence of the claimants on this point who did not produce any oral or documentary evidence in this regard except the assertion of PW-2 in his affidavit Ex. P-4. They could not prove the same through cogent and*

convincing evidence in the absence of which the same can not be granted. For the reason stated above issues no. 4 and 5 are decided in favour of the claimants no. 1 and 2 and against the defendants. Accordingly under section 31 of the Punjab Consumer Protection Act, 2005 compensation / damages are awarded as follows:-

<i>i</i>	<i>Hotel expenditures at Madina Rs,</i>	<i>50,000/-</i>
<i>ii</i>	<i>Transportation expenditure Rs.</i>	<i>07000/-</i>
<i>iii</i>	<i>Compensation/ damages for mental agony etc.</i>	<i>57,000/-</i>
<i>iv</i>	<i>Counsel's fee Rs.</i>	<i>10,000/-</i>
		<hr/>
	<i>Total</i>	<i>1,24,000/-</i>

Issue no. 1

8. This issue relates to territorial jurisdiction of this court which was to be proved by the defendants. In their written statement they have challenged the territorial jurisdiction on the ground that the alleged defective and faulty service were provided by the defendants to the claimants in Saudi Arabia therefore, this court lacks jurisdiction to adjudicate upon the matter. On the other hand learned counsel for the claimants has argued that through agreement Ex. P-2 services of the defendants were hired in Pakistan therefore, the court has the jurisdiction. I have heard the arguments of the learned counsel for the parties on this point. Admittedly Ex. P-2 was executed and signed in the jurisdiction of this court. Moreover, parties also reside in Pakistan. Defendants have executed agreement Ex. P-2 in Pakistan to provide services during performance of "Umrah" in Saudi Arabia therefore, they can be sued in Pakistan. For the reasons stated above this court has jurisdiction to decide the matter between the parties. Accordingly issue no. 1 is decided against the defendants.

Issues no.2 and 3

9. *As for as issues no. 2 and 3 are concerned, both were to be proved by the defendants, however, they failed to produce any evidence on these issues. Accordingly both are decided against the defendants.*

Relief.

10. *In the light of findings on issues no. 4 and 5 the defendants are directed to pay Rs. 1,24,000/- to the claimants no.1 and 2 under section 31 of the Punjab Consumer Protection Act, 2005. File be consigned in record room after completion*

Announced
10-05-2011

Presiding Officer
District Consumer Court
Rawalpindi

It is certified that this judgment consists of seven pages. Each page of it has been dictated, read, corrected and signed by me.

Dated: 10-05-2011

Presiding Officer
District Consumer Court
Rawalpindi