

Judgment sheet

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Miscellaneous Appeal No. 51 of 2020**

**Present**

**Mr. Justice Muhammad Jaffer Raza**

Saudi Arabian Airlines Corporation ..... Appellant.

Versus

Muhammad Ali & others ..... Respondents.

Mr. Muhammad Ameen, Advocate for the Appellant.

Mr. Masood Ahmed Junejo, Advocate for Respondent No.1.

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Dates of Hearing: 11.04.2025, 22.04.2025 & 08.05.2025.

Date of announcement: 14.07.2025

**J U D G M E N T**

**MUHAMMAD JAFFER RAZA – J:** The instant Miscellaneous Appeal has been filed under Section 34 of the Sindh Consumer Protection Act 2014 (**“Act”**) impugning the order dated 29.10.2020 passed in Claim Number 12/2019 preferred by the Respondent No.1, whereby the claim was partly allowed.

2. Brief facts of the case are that Respondent No.1 filed the above noted claim before the Consumer Protection Court at Karachi South (**“Court”**) with the following prayers:-

- “(i) Order the opposite party to pay Rs.175,000 as compensation, Rs.175,000 as cost and Rs.55,000 as Legal Cost. Hence pay Rs.405,000 in Total.
- (ii) Grant any other relief this Honorable Court deem fit under the circumstances of the case.
- (iii) The prayers are made in the interest of justice.”

3. After framing of issues and recording of evidence of the respective parties, the learned Court decreed the claim of the said Respondent in the following terms:-

- “1. To pay Rs.90, 000/- (Rupees ninety thousand only) against the economic loss incurred to the claimant as damage to claimant.
2. To pay Rs.175, 000/- (Rupees one lac seventy five thousand) as damages in relief of compensation to claimant for infringement of liability provided under section 13 of SCPA 2014.
3. To improve the services with regard the reasonable standards as set out by the governing laws.
4. To pay fine of Rs.25, 000/- within thirty days from the date of this order in Government treasury account.”

4. Learned counsel for the Appellant has impugned the above noted order through the instant appeal. Learned counsel has primarily argued on two grounds and each of these grounds shall be dealt with separately in the instant judgment.

5. Learned counsel for the Appellant has argued that the claim of the Respondent No.1 is beyond the limitation period prescribed under the Act. Learned counsel has invited my attention to the relevant and necessary timeline and has contended that the claim of Respondent No.1 has been filed after the statutory period of 30 days as provided under Section 29 of the Act. In this regard learned counsel has contended that the cause of action, if at all, arose in favour of the Respondent No.1 on 28.09.2019 and the said claim was filed on 06.11.2019.

6. The brief facts pertaining to the timeline, according to learned counsel for the Appellant, are that the Respondent No.1 purchased an air ticket to travel from Karachi to Jeddah on 17.09.2019. Subsequently, it transpired that the rescheduled flight of the Respondent for 04.10.2019 was cancelled due to “operational reasons”. The said Respondent was accommodated on another flight on the same day. This information according to learned counsel was given to the Respondent No.1 on 24.09.2019 i.e. 10 days before the date of departure. Learned counsel has further argued that initially the Respondent No.1 was scheduled to travel on 17.09.2019. However, the above schedule was changed for 04.10.2019 on the request of the said Respondent. Learned counsel in this regard has further argued

that it is admitted by the contesting Respondent that the said information about the change of flight was given latest on 28.09.2019 and the time prescribed for limitation started from the said date. The complaint was filed on 06.11.2019 without any application for condonation. In this respect the learned counsel has prayed for dismissal of claim filed by the Respondent No.1.

6. On merits learned counsel has argued that the Appellant is not liable to pay the amount awarded in the Impugned order as the same is not substantiated by any evidence recorded by the respective court. He, in this respect, has argued that the learned Court has not appreciated the scheme of the Act and the evidence adduced at the trial by the contesting parties.

7. Conversely learned counsel for the Respondent No.1 has argued that the complaint was filed within the stipulated period of limitation prescribed under the Act. He has further argued that the claim made by him under the above noted complaint had a valid cause of action. He has further contended that he has served legal notice within the prescribed period after returning from his journey. Lastly, it was contended that the instant adjudication should be on merits and the Respondent No.1's claim ought not to be dismissed on the ground of limitation.

8. On merits, learned counsel for the Respondent No.1 has contended that the learned Court has appreciated the evidence adduced by the respective parties and the order passed is legally sound and does not require any interference of this Court.

9. For the sake of convenience the following points for determination are framed and the matter shall be adjudicated in answering the said points for determination:-

1. **Whether the complaint was barred by limitation?**
2. **Subject to the above, whether the order of the learned Consumer Protection Court requires any interference by this Court?**

**POINT No.1.**

10. To adjudicate the above noted point it is necessary to highlight the Scheme of the law under Section 29 of the Act. The same is reproduced below:-

*“29. Settlement of Claims. (1) A consumer who has suffered damage, or Authority in other cases, shall, by written notice, call upon a manufacturer or provider of services that a product or service is defective or faulty, or the conduct of the manufacturer if service provider is in contravention of the provisions of this Act and he should remedy the defects or give damages where the consumer has suffered damage, or cease to contravene the provisions of this Act.*

*(2) The manufacturer or service provider shall within fifteen days of the receipts of the notice, reply, thereto.*

*(3) No claim shall be entertained by a Consumer Court unless the consumer or the Authority has given notice under sub-section: (1) and provided proof that the notice was duly delivered but manufacturer or service provider has not responded thereto.*

*(4) A claim by the consumer or the Authority shall be filed within thirty days of the arising of the cause of action:*

*Provider that the Consumer Court, having jurisdiction to hear the claim, may allow a claim to be filed after thirty days within such time as it may allow if it is satisfied that there was sufficient cause for not filing the complaint within the specified period:*

*Provided further that such extension shall not be allowed beyond a period of sixty days from the expiry of the warranty or guarantee period specified by the manufacturer or service provider and if no period is specified one year from the date of purchase of the products or providing of service.”*

11. It is admitted that 30 days period is providing under the said Act for filing of the claim. In this regard it is imperative to reiterate and tabulate the timeline pertaining to the instant case. The same is necessary and advantageous for present adjudication.

1	First booking made	14.09.2019
2	Proposed travel date	17.09.2019
3	Change travel date at the request of the Respondent No.1	04.10.2019
4	Flight cancelled and information to the Respondent No.1	24.09.2019 and 28.09.2019
5	Schedule for Travel	04.10.2019
6	Agreed to travel	03.10.2019
7	Transportation invoice	14.10.2019
8	Legal notice	14.10.2019
9	Reply to legal notice	30.10.2019
10	Complaint filed	06.11.2019

12. It is evident from the timeline tabulated above, that lastly cause of action arose on 14.10.2019 after which the relevant legal notice was sent to the Appellant and the above noted complaint was filed, as noted above, within the stipulated period as prescribed under the Act. It is evident that the learned Court has not erred in its determination in respect of limitation and it is held that the claim was within the stipulated period prescribed above. The point of determination is answered accordingly.

**POINT No.2:**

13. I have very minutely examined the record with the assistance of both the learned counsels and I am unable to concur with the findings of the learned Court on merit. It is evident from the bare perusal of the evidence of the respective parties that the Respondent No.1 was unable to establish his claim. In this regard it is most imperative to note that the flight was changed at the request of the Respondent No.1 from 4.10.2019 to 03.10.2019 after the cancellation of the original flight of 04.10.2019 and therefore the Appellant could not be held responsible for the alleged damages suffered by the Respondent No.1. It has further been admitted by the Respondent No.1 that an alternate flight on 04.10.2019 was offered by the Appellant. However, the said Respondent opted to travel a day earlier himself. Relevant part of the cross examination is reproduced below:-

*“It is correct to suggest that the timing of flight was changed to 09:45 am to 10:00 pm on the same date, i.e. 04.10.2019.....It is correct to suggest that I did not pay extra to Saudi Airlines for cancellation of my booking of flight themselves. It is correct to suggest that I changed my reservation of flight from 04.10.2019 10:00 pm to 03.10.2019 at 9:45 am on my own. It is correct that Saudi Airlines did not charge extra for that change of flight to 03.10.2019.”*

14. Further, the learned court assumed, unfoundedly, that a 14 day notice is mandatory for cancellation of flights. No evidence in this respect was ever led and neither did the Respondent No.1 make such an assertion. The learned Court placed reliance on the Civil Aviation Rules 1994 (**“Rules”**) and adjudged that “sufficient advance notice” must be given to the passenger for cancellation of

flights. In the same vein, the learned Court also noted that the 14 day period is not mentioned in the Rules relied upon. Thereafter, the learned Court placed reliance on General Authority of Civil Aviation (“GACA”) issued by the Kingdom of Saudi Arabia. Without adjudicating whether the same apply to flights departing from Pakistan, it is evident that the said provision does not stipulate a 14 day notice period prior to cancellation of a flight. Provision 10 (a) (2) has been misinterpreted by the learned Court as the same only stipulates the liability of the airline to allow the customer of finding an alternate flight within 24 hours in case of cancellation between 14 days and 24 hours of the flight. The same is reproduced below:-

*“Article (10) Flight Cancellation*

*2) Where the customer is notified of the cancellation of a flight between (14) days and (24) hours before the originally scheduled time of departure, the Air 7 Carrier shall allow the Customer the option of finding an alternative flight within (24) hours of the originally scheduled departure time or to terminate the contract under paragraph (6) above.”*

15. After rendering a finding which was unfounded, as deliberated above, the learned Court erred in assuming that the flight was cancelled by the Appellant due to “non-sale” of air tickets. It is held that no evidence in this regard was ever led or established by any of the respective parties and the same was only a mere suggestion by the Respondent No.1, assumed as correct by the learned Court. Further, the reliance on The Warsaw Convention 1929 and the Montreal Convention 1999, amongst other international conventions was both unnecessary and unwarranted. No evidence or assertion regarding the same was ever led by any contesting party in the claim.

16. The grant of damages to the Respondent No.1 does not find any support in the evidence led by the respective parties. Certain admissions made by the Respondent No.1 during his cross examination are fatal to his claim. The same are reproduced as under:-

*“It is correct to suggest that I have not produced my confirmed hotel booking in Jeddah and Mecca in Court. Vol. says, I can produce the same. It is correct to suggest that no charges of hotel booking are mentioned at the document*

*produced at Mark 01. It is correct to suggest that it is not mentioned on the document produced at Mark 03 and Mark 04 that if I could not arrive on 04.10.2019 the payment of transportation will not be returned or refunded. It is correct to suggest that the booking of transportation was from Jeddah to Mecca, and to Madina and Madina airport. It is correct to suggest that the schedule dates of departure and arrival from Jeddah to Mecca and Madina and to Madina airport is not produced at Mark 03. It is incorrect to suggest that as per booking plan of transportation one can travel on any date from one destination to the other. It is correct to suggest that I have not produced any receipt of extra payment for transportation from Jeddah to Mecca on 03.10.2019. It is correct to suggest that I have not produced any document that the company refused to provide any transportation. Vol. says, they informed verbally.” (Emphasis added)*

17. It is evident that the Respondent No.1 was unable to establish his claim and the learned Court erred in granting damages to the Respondent No.1. Further, the assumption regarding the contesting Respondents motivation of undertaking the religious obligation of Umra and the subsequent “mental anguish, humiliation, discomfort, fright, feelings of distress, anxiety, depression and grief” attributed to the said Respondent was superfluous and unsubstantiated. Reliance in this regard can be placed on the judgment of the Hon’ble Supreme Court in the case of **Messrs Pak Suzuki Motors Company Limited through Manager Versus Faisal Jameel Butt and another**<sup>1</sup> wherein whilst adjudicating a claim under the Punjab Consumer Protection Act 2005 the Hon’ble Court held as under:-

*“It is settled law that a litigant is required to plead all material facts that are necessary to seek the relief claimed and then to prove the same through evidence. Parties are required to lead evidence in consonance with their pleadings and no evidence can be led or looked into in support of a fact or a plea that has not been taken in the pleadings. Notably, respondent No.1 also admitted in his cross-examination that he had not described the specific defects in the vehicle in his pleadings/claim. Therefore, the defects alleged in the affidavit of respondent No.1 were beyond the scope of the pleadings and, hence, could not have been considered.”*

18. There is another issue which escaped the mind of the learned Court and warrants adjudication. It is admitted that a total number of 04 tickets were booked for the noted journey. However, the claim was filed by only Respondent No.1. There is no evidence of a power of attorney being executed in favour of

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<sup>1</sup> 2023 C L D 934

Respondent No.1 by the other passengers. Moreover, the damages sought and granted by the learned Court were on the hotel and transportation booking made for all four passengers. In this respect also, with respect the Impugned order is liable to be set aside.

19. In light of what has been discussed above it is held that the Impugned order requires interference of this court. Accordingly, the same is set aside. Instant appeal is allowed and the claim filed by the Respondent No.1 is consequently dismissed.

J U D G E

Nadeem Qureshi “PA”