

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

M.A. No.58 of 2019

[M/s. Universal Network Systems (Pvt) Ltd Service Provider, Blue Ex-Courier v. Muhammad Shahid and another]

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Appellant: Through Ms. Nida Zafar Khokhar, Advocate.

Respondent No.1: Through Mr. Khalid Waheed Khan, Advocate

Date of Hearing
& order: **05.11.2025**

ARSHAD HUSSAIN KHAN, J. The appellant, through the instant Miscellaneous Appeal, has challenged the order dated **07.10.2019**, passed by the Consumer Protection Court / Civil Judge & Judicial Magistrate, Karachi-East in **Complaint No.12 of 2019**, whereby the appellant was sentenced under Section 33(1) of the Sindh Consumer Protection Act, 2014 (**SCP Act, 2014**). Through the impugned order, the appellant was directed to pay a fine of **Rs.25,000/-** within thirty days, to be deposited with the Nazir, District East, Karachi, in the Government Treasury. The appellant was further directed to pay **Rs.25,000/-** as damages for mental anguish and agony to respondent No.1/complainant within the same period. Additionally, the appellant was ordered to pay **Rs.1,45,000/-**, being the price of the subject mobile phone.

The impugned order further stipulates that in case of failure to comply within the prescribed period, the appellant/defendant shall be liable to punishment under **Section 33(2)** of the SCP Act, 2014, which provides imprisonment for a term not less than one month and up to three years, or fine not less than fifty thousand rupees and up to two hundred thousand rupees, or both.

2. Briefly stated, respondent No.1 purchased an iPhone XS Mini (64 GB) for a consideration of Rs.1,45,000/-, vide receipt No.7263, from Sale Buzz, Shop No.120, Amma Tower, M.A. Jinnah Road, Karachi. Respondent No.1 thereafter contacted the representative of the appellant through Abdul Wahab of Cell Buzz and booked the said mobile phone for delivery under Shipment No.5007848480 dated 20.04.2019, destined for Lahore. According to the shipment tracking

record, the parcel was received at the Blue-Ex Karachi operations office on the same date but never reached its intended destination. Respondent No.1 reported the matter to the appellant's office; however, no remedial action was taken. He then approached the Consumer Rights Cell, Governor House Secretariat, Karachi, which forwarded his complaint to the appellant. In response, one Mr. Najeeb, Head of HR and Administration, vide letter dated 21.05.2019, admitted that the parcel was lost during transit as the bag containing it had been offloaded from the airline. It is the case of respondent No.1 that it is the primary duty of the courier company to safely transport and deliver shipments for the charges received from consumers. Having failed to respond to a legal notice dated 30.06.2019, the appellant left respondent No.1 with no option but to file complaint No.12 of 2019 under Section 26-A of the Sindh Consumer Protection Act, 2014, seeking the following reliefs:

1. *To direct the Respondent to pay the cost of Cell phone, i.e. Rs. 145000.00 immediately.*
2. *To direct the Respondent to pay the damages of Rs. 500000.00 (rupees 5 hundred thousand only) for mental torture caused by Respondent or as deemed appropriate by the Hon'ble Court.*
3. *To award actual costs including lawyers' fee and Professional Charges Rs, 110000/- (Rs. 10000/- for legal Notice fee and 100000/-Professional Charges) incurred on the legal proceedings as per Section 32 (g) of the Sindh Consumer Protection Act, 2014.*
4. *To convict the Defendant and pass sentence as per the Sind Consumer Protection Act, 2014.*
5. *Any other appropriate orders / compensation that this Hon'ble Court may deem fit just and proper to the circumstances of the Case be also passed in the interest of justice.*

After institution of the complaint, summons were issued to the appellant, whereupon on 17.08.2019 they filed their written statement through an authorized representative. In the written statement, the appellant primarily questioned the maintainability of the complaint and denied the claim of respondent No.1 on the sole ground that the shipment in question was not insured. It was asserted that, in terms of the appellant's internal policy, a claim is entertained and settled only if the shipment is insured; hence, in the present case, no liability could arise. The appellant further denied the existence of privity of contract,

contending that respondent No.1 was not their consumer, and additionally sought to shift responsibility for the loss by alleging that the mishandling or misplacement of the shipment occurred at the level of the airline company.

To substantiate his case, respondent No.1/complainant examined himself, his son Muhammad Huzaifa, and one Muhammad Bilal, who produced the relevant supporting documents. Thereafter, the complainant's side was closed. In rebuttal, the appellant examined two witnesses, namely Najeebullah Khan (Head of Blue Ex Courier in HR) and Jessica (Key Account Manager at Blue Ex Courier), and subsequently closed its side as well. Upon completion of the evidence and after hearing learned counsel for the parties, the learned trial court disposed of the complaint by directing the appellant to pay the cost of the mobile phone, along with fine and damages, failing which the appellant was to undergo the prescribed term of imprisonment. The appellant has challenged the said order through the present Miscellaneous Appeal.

3. Learned counsel for the appellant argues that the impugned order has been passed without proper application of judicial mind in a hasty and mechanical manner, rendering it illegal, arbitrary, and unsustainable in law. She submits that the learned trial court failed to appreciate the evidence led by the appellant's witnesses and instead relied upon the testimony of respondent No.1 and his witnesses, despite their evidence being riddled with material inconsistencies and insufficient to establish the respondent's claim on merits. She further contends that the subject consignment was admittedly not insured, and in accordance with the appellant's policy, claims are entertained only where the shipment is duly insured; therefore, no liability could be imposed upon the appellant. According to her, the impugned order is contrary to law, facts, equity, and the principles of natural justice, having been passed on mere assumptions and presumptions. She accordingly prays that this Miscellaneous Appeal be allowed and the impugned order be set aside.

4. Conversely, learned counsel for respondent No.1, has supported the impugned order and contends that the appellant miserably failed to discharge its statutory and contractual obligations. He submits that

respondent No.1 duly purchased the mobile phone and entrusted the shipment to the appellant through its authorized agent for delivery to Lahore; however, the parcel never reached its destination. Despite repeated approaches and issuance of a legal notice, the appellant did not offer any redressal. Instead, the appellant attempted to shift liability on the ground that the consignment was not insured, which, according to learned counsel, is an untenable defence and does not absolve a courier company of its primary duty to ensure safe delivery of entrusted goods. Learned counsel further argues that the appellant has failed to rebut the evidence produced by respondent No.1 or to establish any negligence on the part of the Airline or any third party. He submits that the findings of the trial court are based on proper appreciation of evidence and the applicable provisions of the Sindh Consumer Protection Act, 2014. The impugned order being lawful, just and equitable, learned counsel prays for dismissal of the appeal with costs.

5. Upon hearing learned counsel for the parties and examining the material available on the record, the following points arise for determination:

1. Whether the impugned order dated 07.10.2019, passed by the learned Consumer Protection Court suffers from any legal infirmity, misreading, non-reading or misappreciation of evidence?
2. What should the order be ?

6. **Findings on Points No.1 & 2**

To properly appreciate the contentions raised by the parties and to effectively resolve the controversy at hand, it is deemed appropriate to reproduce the preamble of the Sindh Consumer Protection Act, 2014, which reads as follows:

“SINDH CONSUMER PROTECTION ACT, 2014.

An Act to provide and protect the rights and interests of consumers in the Province of Sindh.

Preamble. *Whereas, it is expedient to provide for protection and promotion of the rights and interests of the consumers, speedy redress of consumer complaints and for matters connected therewith.*

A reading of the preamble shows that the legislature enacted the law with the object of safeguarding the interests of consumers, promoting their rights, and providing an expeditious mechanism for

redressal of consumer grievances. To achieve this purpose, a wide range of powers has been conferred upon the Authority as well as the Consumer Courts/Councils under Part-VI of the Act. Correspondingly, duties have been imposed upon service providers, including the obligation to make proper disclosure as mandated by Section 16 of the Act. The Act also places restrictions upon service providers from making any false, deceptive or misleading statements, as contained in Part-V thereof. A holistic reading of the SCP Act, 2014, when examined in light of its preamble and the title, reveals that it is beneficial legislation aimed at protecting the public from exploitation by those with whom they stand in a consumer relationship, and at imposing necessary obligations on such service providers. Being a welfare Statute, it is required to be construed in a manner that advances the legislative intent, and its beneficial provisions are to be interpreted liberally so as to extend the protection and remedies intended by the legislature¹.

7. The present case, when examined through the lens of the legislative intent underlying the SCP Act, 2014, it becomes evident that respondent No.1 squarely falls within the definition of a “consumer,” and the appellant, being engaged in the business of courier and shipment services for consideration, is a “service provider” within the meaning of the Act. Once the appellant undertook to transport the respondent’s parcel under a registered shipment number, it became legally bound to ensure safe delivery of the consignment to its destination. The material placed on the record demonstrates that the shipment in question was never delivered and was admittedly lost during transit. The appellant’s own correspondence, including the letter dated 21.05.2019 issued by its Head of HR and Administration, concedes that the parcel was misplaced when the airline offloaded the cargo. This admission itself establishes deficiency in service as defined under the SCP Act, 2014.

8. The appellant’s primary defence before the trial court was that the shipment was *not insured* and, therefore, the company could not be held liable for its loss. The appellant also attempted to divest responsibility by attributing the loss to the airline. The obligation to

¹ Lahore Development Authority through D.G., Lahore and another v. Abdul Shafique and others [PLD 2000 SC 207]

provide safe, secure and efficient service flows from the statute and is not contingent upon optional insurance. Insurance may enable a consumer to recover enhanced compensation, but the absence of insurance does not absolve the service provider from liability for its negligence or deficiency in service. Any contractual clause to the contrary would also be hit by the prohibitions contained in Part-V of the Act, which bars misleading, deceptive, or unfair terms that defeat consumer protection.

The appellant's further plea that there was no privity of contract between it and respondent No.1 is equally misconceived. The shipment was booked through the appellant's authorized outlet, under its own tracking system, and was carried throughout under its operational control. Therefore, the appellant cannot evade liability by attempting to shift responsibility to the shopkeeper or the airline, when the shipment remained in its custody for the entire duration of the transportation process.

9. The record shows that respondent No.1 duly proved:

- purchase of the mobile phone worth **Rs.145,000/-**
- booking of the shipment with the appellant
- tracking details showing the parcel was handed over to the appellant
- failure of the parcel to reach its destination
- Written admission by the appellant's representative (letter dated 21.05.2019) acknowledging that the parcel was lost while in transit due to offloading of the bag by the airline.

Whereas the appellant, despite examining two witnesses, failed to produce:

- any insurance requirement printed on the consignment note,
- any terms and conditions forming part of the contract,
- any documentary proof fixing responsibility on the airline,
- any internal inquiry report,
- any evidence showing that the consignee was informed of the loss in a timely manner.

It is a settled principle of consumer law that a service provider cannot evade liability merely on the ground that a service was not insured, particularly when the consumer was never informed that non-insurance would absolve the courier of responsibility. While obtaining insurance may be optional for the consumer, the obligation to ensure safe and secure delivery of the consignment is a mandatory duty of the

courier. Thus, the stance of the appellant is legally untenable and was rightly rejected by the trial court.

10. It may be noted that under the law the term “deficiency in service” is to be construed broadly and includes, inter alia:

- *failure to provide the service in the manner contracted or reasonably expected,*
- *negligence in handling, transporting, or safeguarding the consumer’s goods or property, and*
- *failure to deliver goods in the condition, timeframe, or manner that an ordinary and prudent consumer would expect from a service provider.*

It may also be observed that, as a general principle, a courier service bears the primary responsibility to ensure the *timely, safe, and secure delivery* of a shipment from the point of dispatch to its final destination. This obligation necessarily includes careful handling of the parcel, ensuring its safe arrival, and maintaining proper communication and customer service throughout the process.

In the instant case, the loss of the parcel/shipment, by itself, constitutes a prima facie demonstration of negligence and deficiency in service on the part of the appellant. This lapse is further aggravated by the appellant’s subsequent conduct-namely, its failure to initiate or undertake any meaningful inquiry into the loss, its non-responsiveness to the legal notice issued by respondent No.1, and its failure to address queries regarding the non-delivery of the shipment. Such conduct reflects a willful and deliberate disregard for the respondent’s rights and underscores the gravity of the deficiency in service attributable to the appellant.

11. Upon consideration of the facts, the following are established:

- Respondent No.1 entrusted a valuable item to the appellant for delivery.
- The appellant failed to deliver the consignment.
- No evidence of due diligence, safe custody, or preventive measures was produced.
- No remedy or compensation was voluntarily offered by the appellant.

The letter issued by the appellant’s representative (Head of HR/Admin) itself acknowledges loss of the parcel during transit. This amounts to clear and admitted deficiency in service.

12. It is pertinent to note that the evidence presented by the appellant's witnesses has been duly considered. While they offered explanations regarding the consignment loss and internal procedures, the trial court's findings are supported by the documentary record, including admissions made by the appellant's representatives, and the unchallenged facts established by respondent No.1. In view of the statutory duties of the service provider under the Sindh Consumer Protection Act, 2014, and the reasonable expectations of a consumer, the trial court's conclusions regarding deficiency in service, liability for the consignment, and the award of statutory fine and damages are well-supported and legally sustainable.

13. It is also observed that the trial court, in awarding Rs.25,000/- as statutory fine and Rs.25,000/- as damages for mental agony, has acted within its lawful discretion. The statutory fine reflects the seriousness of the deficiency in service and ensures compliance with Section 33(1) of the Sindh Consumer Protection Act, 2014. The damages for mental agony adequately compensate respondent No.1 for the emotional distress, mental suffering, and inconvenience caused by the loss of a valuable consignment entrusted to the appellant. The appellant's failure to respond to repeated communications and legal notice exacerbated the hardship suffered by the complainant. The quantum of both the fine and damages is proportionate, just, and consistent with the protective purpose of the SCP Act, 2014, which seeks not only to redress pecuniary loss but also to provide relief for non-material harm suffered by consumers due to negligent or deficient services.

14. Upon evaluation of facts and the evidence, I am of the view that the trial court has rightly held the appellant liable for the cost of the phone, damages for mental agony, and statutory fine under Section 33 of the SCP Act, 2014. The impugned order dated 07.10.2019 is thus well-reasoned, legally sound, and fully in conformity with the provisions of the Sindh Consumer Protection Act, 2014. The appellant has failed to demonstrate any misreading, non-reading, or incorrect application of law, nor any jurisdictional defect, illegality, or perversity warranting interference by this Court.

In view of the foregoing, the Miscellaneous Appeal is without merit and is, therefore, dismissed. Consequently, the impugned order dated 07.10.2019 is upheld. These constitute the reasons for the short order announced on 05.11.2025.

JUDGE

Jamil