

HCJDA-38  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH MULTAN**  
**JUDICIAL DEPARTMENT**

**First Appeal Against Order No.128 of 2014**

*Indus Motor Company Ltd. & another*  
**Versus**  
*Malik Ishfaq Ahmad & another*

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

**Date of Hearing:** 24.02.2022  
**Appellants by:** Mr. Muhammad Suleman Bhatti,  
Mr. Saqib Aziz Khurram and  
Mr. Jawwad Younas Advocates  
**Respondents by:** Syed Muhammad Najam-ul-Saqib  
Mumtaz Advocate for respondent No. 1  
Mr. Muhammad Farooq Shahid  
Advocate for respondent No. 2

*“For a man, new car owned is like a first girlfriend who introduced us to the feelings of butterflies in the tummy and goose bumps across the skin. It is a relationship that can keep you up all night, building castles in the air. But when she is away and not found you miss her like the desserts miss the rain”*

Similarly it happened with Malik Ishfaq Ahmad/respondent No.3 (*contesting respondent*) who being the Consumer<sup>1</sup> purchased a new Toyota Corolla XLI<sup>2</sup>, (*the Product*) from Indus Motor Company Limited etc. (*appellants*) through its authorised Dealer named New Multan Motors (*respondent No.2*) on 15.01.2010 but lost it just after 17 days, on 01.02.2010, when it got fire and

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<sup>1</sup> Defined under Section 2(c) of the Punjab Consumer Protection (Act II of 2005)

<sup>2</sup> Model 2010; Colour white; Engine No. VO36062; Chases No. NZE140-2038830

completely burnt due to defect in the fuse box. Therefore, the learned Consumer Court Dera Ghazi Khan camp at Muzaffargarh (*Consumer court*), vide an order dated 29.03.2014, on a claim<sup>3</sup> filed by contesting respondent against appellants and respondent No. 2 under Section 25 of the Punjab Consumer Protection Act, (II of 2005) *{Act}* declaring *the product* as defective had directed as under: -

- i. *Appellants shall pay Rs.1269000/- (twelve lacs and sixty nine thousands) the price of the product with mark up @ 10% from the date of institution of the claim to the contesting respondent.*
- ii. *Respondent No.2 shall pay Rs.25000/- (twenty five thousands) as counsel fee and Rs.5000/- (five thousand) as litigation charges with mark up @ 10% from the filing of claim to contesting respondent.*

2. Feeling aggrieved from the above said decision (*impugned order*), appellants have approached this Court through the instant appeal preferred under Section 33 of the *Act*.

3. Facts of the case are that contesting respondent purchased '*the product*' from appellants through its Dealer (*respondent No.2*) and acknowledged the delivery on 15.01.2010. According to him, on 01.02.2010 at about 04:00/05:00 pm, he was maintaining his land situated at Muzaffargarh, when all of a sudden he observed smoke rising from dash board of '*the product*'; it transpired that because of short circuit the fuse box got fire; he made an attempt to extinguish the fire but could not succeed and his hand also received injury; because of this reason '*the product*' along with its papers was completely burnt; he

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<sup>3</sup> See: Section 25 of the Act

informed the Police Station Shah Jamal district Muzaffargarh that was resulted into recording of report No.42 on 03.02.2010 in Roznamcha<sup>4</sup> (Mark-A); on 04.02.2010 he had taken 'the product' to respondent No.2 where a Service Advisor (Mechanic) made its inspection and prepared a report; contesting respondent thereafter approached the appellants and respondent No.2 for replacement of 'the product' or return price thereof beside compensation because of injury and mental torture but of no consequence; on 17.02.2011 he also issued notices (P-11 and 12) to appellants and respondent No.2. Ultimate prayer made by contesting respondent was for replacement of 'the product' or return of its price i.e. Rs.1300000/- (thirteen lacs), recovery of Rs.100000/- (one lac) because of injury and medical treatment and Rs.500000/- (five lacs) for mental agony.

4. Appellants in their joint written statement admitted that 'the product' was sold to contesting respondent. They further added that the Company is known because of its quality in product and reputation with regard to manufacturing of parts etc.; there was no pick and choose while manufacturing and only machine tested parts are assembled; it is reported that contesting respondent made alteration in the electric system of 'the product' at his own by adding power windows and other changes; since the Toyota Dealers refused to do so therefore contesting respondent approached private mechanic for the job; the wires used by private mechanic for such alteration could be a reason for fire; possibility of any other reason also cannot be ruled out. Dismissal of claim was prayed for.

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<sup>4</sup> A register maintained in Police Station to enter the important events of each day

5. Respondent No.2 in his written reply maintained that he provides the services at the behest of appellants; at the time of selling of '*the product*' a warranty card has to be issued showing that in what eventualities the Company can be responsible; according to technical report some alteration was made in '*the product*' which resulted into fire. He too had asked for turning down the claim.

6. Before the evidence could be recorded, contesting respondent moved an application for appointment of Government Vehicle Examiner for the purpose of inspection of '*the product*' and submission of report. It was dismissed vide an order dated 27.06.2011 by holding that this question would be considered after completion of evidence to be produced by the parties. So it was subsequent thereto when vide an order dated 27.04.2012 a Senior Instructor of Vehicles of Government College of Technology, Multan (*Malik Bashir Ahmad/Pw-3*) as an expert was directed to make the inspection of '*the product*' and to submit his report.

7. In evidence Malik Ashfaq Ahmad/contesting respondent got his statement recorded as Pw-1 who also produced Muhammad Rauf as Pw-2. After the receipt of expert report, Malik Bashir Ahmad Senior Instructor Auto was too brought in witness box as Pw-3.

8. On the other hand Toqeer Aslam a representative of respondent No. 2 came in witness box as Dw-1. An interim order dated 26.04.2012 shows that instead of producing independent evidence, the appellants relied on the same evidence that was produced on behalf of respondent No.2.

9. Learned counsel for appellants contends that the impugned order is against law and facts; contesting

respondent has failed to establish that if there was any deviation from design or construction or composition of 'the product' therefore it cannot be said to be the defective product; 'the product' got fire not because of any fault on the part of the Company for the reason that there was an alteration with the connivance of some local mechanic; impugned order is result of mis-reading and non-reading of evidence; learned Consumer court based its decision only on the expert report which was not conclusive; examination of 'the product' after 29 months and the report on the basis thereof, could not be taken into consideration; the objections on expert report were not decided by the learned Consumer court; Toyota Company is known for its quality throughout the World and the reason for its reputation is the use of quality parts in its manufacturing and that standard parts are used in all the vehicles; burden of proof was on the shoulders of contesting respondent which he could not discharge; impugned order is devoid of any good reason hence cannot sustain. Learned counsel finally contended that as impugned order is result of erroneous findings therefore it is liable to be interfered and set aside by this Court.

10. Appeal has been opposed by learned counsel for contesting respondent.

11. **HEARD**

12. Across the globe, the efforts are being made to protect the Consumer rights and one can find the best legislations on this subject. When seen in the historical background it is found that the earliest known statement on

consumer rights at political level was given on 15<sup>th</sup> March<sup>5</sup> 1962, when Mr. John. F. Kennedy the President of the United States of America delivered a speech in Congress. While focusing on the Consumer rights he said<sup>6</sup>: -

*“If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis then his dollar is wasted, his health and safety may be threatened and the national interest suffers”*

**13.** Mr. Kennedy in his speech also outlined following four consumer rights: -

- *Right to safety.*
- *Right to be informed.*
- *Right to choose and*
- *Right to be heard.*

**14.** In 1981, ECOSOC<sup>7</sup> requested the Secretary General UNO to continue the consultations on consumer protection with a view to elaborating a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries and thereafter in 1983 draft guidelines was submitted by ECOSOC. On the other hand, at the time of their negotiation the guidelines were opposed by certain business interests and developed countries as paternalistic, and they have since been criticized as vague, overblown and unnecessary. Finally after extensive discussions and negotiations it was 9<sup>th</sup> April 1985 when the guidelines were adopted by consensus

<sup>5</sup> 15<sup>th</sup> March of every year is therefore called World Consumer Rights Day

<sup>6</sup> <https://theconversation.com/consumer-rights-are-worthless-without-enforcement-113244#:~:text=Kennedy%20offered%20these%20words%20of,the%20right%20to%20be%20heard.>

<sup>7</sup> United Nations Economic and Social Council

resolution of the United Nations General Assembly<sup>8</sup>. These guidelines originally covered following seven areas: -

- i. Physical safety.*
- ii. Promotion and protection of consumers' economic interests.*
- iii. Standards for the safety and quality of consumer goods.*
- iv. Services, distribution facilities for essential consumer goods.*
- v. Services measures enabling consumers to obtain redress, education.*
- vi. Information programmes.*
- vii. Measures relating to specific areas (food, water, and pharmaceuticals).*

**15.** The objectives of guidelines were to facilitate the production and distribution patterns responsive to the needs and desires of consumers; to encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers; to assist the countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers and to encourage the development of market conditions which provide consumers with greater choice at lower prices.

**16.** The general principles were that there has to be the protection of consumers from hazards to their health and safety; the promotion and protection of the economic interests of consumers; access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs; consumer education; availability of effective consumer redress;

**17.** It was also formulated that the Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies; special care should be taken

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<sup>8</sup> <https://www.refworld.org/docid/3b00f2271f.html>

to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population; all enterprises should obey the relevant laws and regulations of the countries in which they do business and they should also conform to the appropriate provisions of international standards for consumer protection to which the competent Authorities of the country in question have agreed.

**18.** In Pakistan Consumer was said to a King but without Crown who waited long for the birth of an effective legislation on Consumer rights. Province of Punjab was the fourth in series when promulgated the Act in 2005. After remaining pending for about 11 years the bill was passed by the Punjab Assembly on 13<sup>th</sup> January 2005, assented to by the Governor of the Punjab on 19<sup>th</sup> January 2005 and, was published in the Punjab Gazette (Extraordinary), dated 25<sup>th</sup> January 2005.

**19.** Reverting to the merits of the case purchase of '*the product*' by contesting respondent and its sale by appellants through respondent No.2 is not under dispute. This too has not been denied that the contesting respondent received '*the product*' on 15.01.2010 which within next 17 days got fire and burnt as a whole.

**20.** The argument of learned counsel for appellants that '*the product*' was examined after 29 months of the alleged incident is the correct position but for that contesting respondent cannot be held responsible who after filing the claim moved an application on 11.06.2011 for examination of '*the product*' through an expert but surprisingly it was opposed by appellants through written reply. It was turned down by the learned Consumer court on 27.06.2011 for the reason that the request would be reconsidered after the evidence of the parties was complete. Contesting



respondent repeated the application on 26.04.2011 after the evidence of both the sides was over. This time vide an order dated 27.04.2012, application was accepted with direction for inspection of '*the product*' by a qualified instructor. The legal proposition is absolute that in terms of Section 30(c) of the Act the Consumer Court has the powers to decide a dispute on the basis of evidence relating to the accepted industry standards and by inviting expert evidence in this regard.

**21.** It was also argued that claim was filed after one year so it was fatal to contesting respondent. This is not the true picture framed by learned counsel for appellants. Earlier well in time the contesting respondent had filed the claim and during proceedings when it transpired that engine number of '*the product*' was wrongly posted, the claim was withdrawn with permission to file fresh one. An amount of Rs.3000/- (*three thousands*) as cost was imposed on contesting respondent which appellants had received without any protest.

**22.** The contention that warranty does not cover the case of accidental fire and if '*the product*' had to be insured, it was the Insurance Company who had to face the liability has no relevance in this case for the simple reason that the contesting respondent approached the learned Consumer Court on the question of defective product placing the liability on the Company/appellants.

**23.** Admittedly contesting respondent is a 'Consumer' within the meanings provided under Section 2(c) of the Act as he had bought '*the product*' for a consideration. This too is not a fact under conflict that the car purchased by contesting respondent is a 'Product' within the meanings of Section 2(j) of the Act. Similarly appellants are 'Manufacturer' and 'Manufacturer of the Product' in terms of Section 2(h) and (i) of the Act.

24. Under Sections 4 to 8 of the Act a '**Defective Product**' can be in different eventualities that includes defective in construction or composition (*Section 5*), defective in design (*Section 6*), defective because an adequate warning has not been given (*Section 7*) and defective because it does not conform to an express warranty of the manufacturer (*Section 8*). '*The product*' in the case in hand undisputedly is covered under Section 5 of the Act and that is as under: -

*“A product shall be defective in construction or composition if, at the time the product was manufactured, a material deviation was made from the manufacturers’ own specifications, whether known to the consumer or not”*

25. Therefore any fault, imperfection and shortcoming in quality<sup>9</sup>, quantity<sup>10</sup> and potency<sup>11</sup> shall take a product to *the defective product*.

26. Primarily it has to be seen in the light of defence taken by appellants and respondent No. 2, that if the contesting respondent managed some alteration in '*the product*' with the intervention of any local mechanic and for this reason the fuse box lost its originality which ultimately was a cause of fire to '*the product*' and that was completely burnt. As this specific instance was taken by the appellants and respondent No.2 therefore onus was on them to prove it.

27. Appellants and respondent No. 2 both have relied upon the testimony of Toqeer Aslam (*Dw-1*), which I have gone through and hold that on the basis of his sole statement it cannot be declared that there was some alteration or change made by the contesting respondent in '*the product*' and that was the cause of fire. It is

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<sup>9</sup> It relates to character or nature, as belonging to or distinguishing a thing

<sup>10</sup> Exact or specified amount or measure

<sup>11</sup> Power and capacity

important to add here that Touqeer Aslam (*Dw-1*) is not a qualified expert who admitted in cross-examination that in his certificate of service he was simply metric student. However he added that during service he had passed BA and he was also having a Diploma. He conceded that he was not having any professional Diploma.

**28.** Case of appellants was that when the vehicle was brought by contesting respondent to respondent No.2, it was examined by Muhammad Amin mechanic who observed that the fire was the result of alteration. Said Muhammad Amin was the most relevant witness but he was not produced so appellants are responsible for withholding the best available evidence and under the settled principles of law in the given circumstances the presumption shall be against them<sup>12</sup>.

**29.** Even the original report that was stated to be prepared by Muhammad Amin was not produced in the court and only photocopy (*MarkD-5*) thereof was placed on record. It does not contain the name or signature or stamp of Muhammad Amin mechanic. Even this report is not conclusive for the reason that Muhammad Amin primarily found alteration in ‘*the product*’ however he was of the view that further investigation was required and in this context the relevant paragraph of said report is as under: -

*“For further investigation and in order to finally determine exact cause of damages, I have requested to IMC Lahore (on 04.02.10) to send Mr. Sarmad and he promised to send him on Tuesday”*

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<sup>12</sup> Article 129(g) of the Qanoon-e-Shahadat Order, 1984

**30.** With regard to ‘CORRECTIVE ACTION’ he again reported as under: -

*“Not yet decided. Expert guidance from IMC required as mentioned above.”*

**31.** A person (*Toqeer Aslam/Dw-1*) who was not expert and gave no opinion about the cause of fire, to bring him in the witness box was just a futile exercise and the person who could be helpful for the appellants he was kept in dark without assigning any reason by the appellants.

**32.** The appointment of expert by the learned Consumer court has been taken to serious exception by learned counsel for appellants but to my mind it is a malafide move. Record shows that it was also the desire of appellants that there had to be a third party report. During cross-examination on contesting respondent an offer was made for examination of ‘*the product*’ by third party and reply was as under: -

اس گاڑی کو کوئی تھرڈ پارٹی (آٹو الیکٹریکل انجینئر) چیک کرے تو مجھے کوئی اعتراض نہ ہے

**33.** In above circumstances one can understand that as the expert report is against the interests of appellants so a so-called attack has being made on it.

**34.** If the appellants were aggrieved from the order of appointment of expert, they had a right to assail it. The argument that as no appeal is provided under the Act against an interim order so it was not taken to any exception appears to be afterthought.

**35.** Taking the benefit of Rule 15(3) of the Punjab Consumer Protection Rules, 2009 appellants had filed the objections on the correctness of the findings of the report. It is stated that these objections were not decided but I find otherwise. The order dated

13.09.2012 is quite relevant to resolve the said controversy and same is as under: -

*“The file is at the stage of arguments relating to the objections filed by the defendants against the report of local Commissioner. It is observed after hearing the arguments that the statements of both local Commissioners should be recorded as witnesses of the claimant liable to be cross examined on behalf of the defendants. It is also directed that summons be issued through PD to the both local commissioners to appear as witnesses on the next date”*

**36.** To my mind the objections were disposed of finally when the order was made for summoning of the experts and their examination as witnesses. For clarification of the facts it is appropriate to add here that ‘*the product*’ was jointly examined by two experts named Syed Mumtaz Hussain Shah (Chief Instructor Auto) and Malik Bashir Ahmad (Senior Instructor Auto) and out of them Malik Bashir Ahmad came in witness box as Pw-3.

**37.** I have gone through the objections raised on the expert report and I have also heard learned counsel for appellants in this context who is unable to show any reason that may persuade this Court to turn down the same.

**38.** The report shows that the experts inspected ‘*the product*’ in presence of Mr. Toqeer Aslam (*Dw-1*), Zulfiqar Ali another representative of the appellants and contesting respondent. Their snaps were also obtained during the proceedings and images thereof were posted in the report.

**39.** There is another dimension of this case which cannot be lost sight. The appellants are not sure that what their version is? In written reply (*para-3*) it was maintained by them that ‘*the product*’ got fire because of alteration in the

vehicle and that possibility of any other reason (any further alteration) cannot be ruled out. However when the affidavit of Touqeer Aslam (*Dw-1*) was produced, another plea taken was as under: -

جس وقت کار میں آگ لگی اس وقت کار کا انجن بند تھا اور کار رقبہ پر کھڑی تھی۔  
 انجن بند کار میں آگ کسی تخریب کاری یا دشمنی کا نتیجہ بھی ہو سکتی ہے

40. In view of discussions made above the expert report submitted on 03.07.2012 is the most relevant evidence in this case and cannot be brushed aside.

41. Whether there was any alteration in ‘the product’? It has been answered in the report by the experts and that is as under: -

*‘That Senior Service advisor Toyota motors pointed out that the claimant had got made various alterations in the car like power window and central locking. In this regard it is stated that in order to modify/alter or replace the manual operated window system of a car with Power System, it is inevitable to remove the Manual Window System. But during the inspection of the gates of the said burnt car it has been found that the Manual Operated Window System was present in its original and genuine fittings and there is no sign of Power Windows installation in the said burnt car. For further satisfaction, clarity and comparison another car in working condition present in the workshop of Toyota Motors, Bosan Road Multan was inspected and the same Manual Operated Window System was found fitted there. Hence it is no doubt, that the afore said burnt car contained Manual Operated Window System as exhibited in the photographs of the doors of the said cars’*

42. The concluding paragraphs of the report are as under: -

*“During the examination of the part of the said burnt car where fuse box is installed, it was found that the fuse box and its surrounding area were more burnt than the other parts of the car as shown in the figures below.*

*9. That after inspecting the various parts of the said burnt car, perusing the record and observing the facts and figures, circuit*

*diagrams, **Local Commission concludes that manufacturing fault in some relay and fuse box became the cause of catching fire of the said vehicle**”  
(Emphasis Applied)*

**43.** A car has various electrical components that require a fuse to protect against short circuits. There are two fuse boxes, one located near the engine or under the hood and the other is located near the driver seat. The car fuse box under the hood protects engine components including engine control unit (ECU), cooling fan, ABS motor and battery. Whereas the fuse box near the dashboard protects cabin components like power windows, interior lights, radio or infotainment system and turn signals. A car fuse box has a series of different fuses, relays and diodes to protect the electrical circuits from overload or short circuit. The fuse box is powered directly by the battery. The wires from the fuse box connected to the vehicle components that need protection<sup>13</sup>.

**44.** The report submitted by Malik Bashir Ahmad Senior Instructor has made it clear that there was manufacturing fault in some relay and fuse box and that was the ultimate cause of fire to ‘*the product*’ which means that the car was defective product within the meanings of Section 5 of the Act therefore contesting respondent rightly approached the learned Consumer court for the relief.

**45.** In Indus Motors’ case<sup>14</sup> one Muhammad Arshad purchased a Toyota Corolla Model 2008. There was defect of oil leakage from its transmission system (gearbox) which was replaced at the manufacturer's dealership. On claim

<sup>13</sup> <https://www.dubizzle.com/blog/cars/car-fuse-box/#~:text=The%20car%20fuse%20box%20under,infotainment%20system%20and%20turn%20signals.>

<sup>14</sup> Chairman Indus Motors Co. vs. Muhammad Arshad & others PLD 2012 Lahore 264

filed by the Consumer, the Consumer court directed replacement of car from a new car of model 2008. By declaring that ‘Cars in our economy are lifelong assets’ it was observed by this Court the mechanics at the workshop opened about 16 nuts and bolts of the car's engine to remove its gearbox for which the axle was also opened; the procedure involved the lifting of the engine so that the gearbox can be removed from the axle; even if it is assumed that the unbolting and refitting of a car engine to be a harmless procedure the fact of the matter is that a vital functional mechanism of the purchased vehicle has been altered from its original manufacturer's condition. About the expectation of Consumers it was held that: -

*“Moreover international name brands carry expectations from consumers that are built in decades of consistent and reliable service. The consumer is therefore justifiably disappointed with a reassembled transmission system in his purchased vehicle”*

**46.** This Court therefore modified the order of the Consumer court and directed that the Consumer shall return his purchased vehicle to the manufacturer who shall forthwith refund the full price thereof received from the Consumer.

**47.** Indus Motor Company Limited (*appellants*) on its official website<sup>15</sup> claims that it has made large scale investments in enhancing its own capacity and in meeting customer requirements for new products; Corolla is, today, the largest selling automotive brand model in Pakistan; this country is the highest Corolla-selling nation in the Asia-

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<sup>15</sup> <https://www.toyota-indus.com/corporate/>



Pacific region and also has the distinction of being No. 1 in Toyota's Asian market. The vision<sup>16</sup> of Indus Motor has also been posted as under: -

*“To be the most respected and successful enterprise, delight customers with a wide range of products and solutions in the automobile industry with the best people and the best technology”*

48. Appellants therefore are bound to honor their words. What the level of disappointment of a Consumer will be who by rejecting the products of other automobile Companies prefer to purchase the product of a particular Manufacturer being impressed form its declaration but the position is found otherwise.

49. In Jose Philip Mampillil case<sup>17</sup> when Premier Automobiles was not ready to accept the liability in case of defective car, the Supreme Court of India had observed as under: -

*“In our view, it is shameful that a defective car was sought to be sold as a brand new car. It is further regrettable that, instead of acknowledging the defects, the 1st Respondent chose to deny liability and has contested this matter.”*

50. The ultimate outcome of the discussions, deliberations, and analyses of the evidences made above is that the Car sold to contesting respondent by appellants through respondent No.2 was ‘*the defective*’ product due to imperfection in the fuse box and for that reason it got fire and burnt as a whole. Therefore, no case for interference in

<sup>16</sup> <https://www.toyota-indus.com/corporate/vision-mission/>

<sup>17</sup> Jose Philip Mampillil vs Premier Automobiles Ltd. and another {2004 (1) SCR 1095} (<https://indiankanoon.org/doc/943637/>)

a well reasoned impugned order is made out hence this appeal is **dismissed**.

**(Sohail Nasir)**  
**Judge**

**Approved for Reporting**

**(Judge)**

*Adeel*