# JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

**Criminal Appeal No. 422 of 2022**

MURTAZA TALPUR

VERSUS

LEOPARDS COURIER SERVICES

**Criminal Appeal No. 16 of 2023**

MST. NUZHAT SHAHEEN AWAN

VERSUS

M/S SERENE AIR PRIVATE LIMITED THROUGH CEO

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| Appellants by | : | Mr. Dileep Kumar Doshi, Advocate.<br>(for the Appellant in Crl. Appeal No.422/2022)<br>Mr. Bebbr Sattar, Advocate.<br>(for the Appellant in Crl. Appeal No.16/2023) |
| Respondents by | : | Mr. Sajjad Zafar, Advocate.<br>(for Respondent in Crl. Appeal No.422/2022)<br>Mr. M. Hafeez, Advocate.<br>(for Respondent in Crl. Appeal No.16/2023) |
| Date of Hearing | : | **25-04-2024.** |

**SAMAN RAFAT IMTIAZ, J.**

1. By this common judgment, we intend to dispose of Criminal Appeal Nos. 422/2022 and 16/2023 arising out of Judgment and Order dated 20-10-2022 and 07-12-2022 respectively passed by the learned Judge Consumer Court, Islamabad ("**Islamabad Consumer Court**") and which have been referred to this Division Bench constituted by the Honorable Chief Justice of Islamabad High Court in pursuance of the Orders dated 09.02.2023 and 28-08-2023 passed by a Single Bench of this Court to consider, *inter alia*, whether the Consumer Court constituted under the Islamabad Consumer Protection Act, 1995 ("**Islamabad Consumer Protection Act**") is empowered to grant general and special damages, as well as cost of litigation.

Facts in Criminal Appeal No. 422 of 2022

2. This Criminal Appeal has been filed by the Appellant [Murtaza

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Talpur] against the Judgment dated 20-10-2022 ("**Impugned Judgment**") passed by the Islamabad Consumer Court.

3. The brief facts of the case as per the Memo of Appeal are that a friend of the Appellant sent him 70 kg mangoes from Hyderabad through the Respondent [Leopards Courier Service] on 30-06-2022. The Appellant received 7 boxes of mangoes in Islamabad which were broken and badly damaged. The seals were open and more than 20kg mangoes were missing. The Appellant contacted the Respondent for redress of his grievance but all in vain.

4. The Appellant filed complaint under Section 8(1) of the Islamabad Consumer Protection Act before the Islamabad Consumer Court. The learned Islamabad Consumer Court allowed the complaint vide the Impugned Judgment only to the extent of the consignment cost amounting to Rs.2,800/- but rejected the claim of recovery of damages for mental torture and agony, and litigation cost by relying upon *Ashfaq Ahmed Khan Vs. PTCL and other,* PLD 2016 Islamabad 112, hence this appeal.

Facts in Criminal Appeal No. 16 of 2023

5. This Criminal Appeal has been filed by the Appellant [Nuzhat Shaheen Awan] against the Order dated 07-12-2022 ("**Impugned Order**") passed by the Islamabad Consumer Court

6. The brief facts of the case as per the Memo of Appeal are that the Respondent [Serene Air Private Limited] issued flight confirmation No. CKGXZQ to the Appellant for departure from Islamabad to Jeddah on 26-05-2022 at 4 a.m. by flight ER-1801 and return to Islamabad from Jeddah on 23-06-2022 at 9 a.m. on flight ER-1802 and received payment of Rs.93,435/-. On 30-05-2022, the Respondent sent an SMS and on 11-06-2022 an email informing the Appellant that flight ER-1802 from Jeddah to Islamabad on 23-06-2022 has been cancelled due to operational reasons. The Respondent stranded the Appellant on foreign soil without making return journey arrangement rather offered the reimbursement of half of the amount of actual return airfare. The Appellant is a female and senior citizen. The Respondent's gross negligence caused emotional distress, mental agony, waste of time and monetary losses to the

Appellant to the tune of Rs. 500,000/-.

7. The Appellant filed complaint under Section 8(1) of the Islamabad Consumer Act before the learned Islamabad Consumer Court. The learned Islamabad Consumer Court dismissed the complaint while observing *inter alia* that the Consumer Court cannot award damages incurred in lawyer's fees, expenses, and damages and that the Appellant should institute a civil suit for recovery of damages with regard thereto, hence this appeal.

Arguments

8. The learned counsel for the Appellants relied upon Section 9(3) read with Section 2(f)(i), of the Islamabad Consumer Protection Act to argue that the respective complaints of the Appellants fell within the ambit of 'unfair trade practice' and in view thereof compensation could be granted by the Islamabad Consumer Court. They further submitted that reliance of the Islamabad Consumer Court upon *Ashfaq Ahmed Khan (Supra)* is misplaced as according to the latest view expressed in *Waqas and Brothers Enterprises (Private Limited) Vs. Messrs DHL Express and another*, PLD 2021 Islamabad 333 damages can be granted. Alternatively it was submitted that at the very least the Islamabad Consumer Court was empowered to impose penalty pursuant to Section 9(1) of the Islamabad Consumer Protection Act.

9. On the other hand, the learned counsel for the Respondents opposed the arguments made on behalf of the Appellants and submitted that the Appellants failed to produce any evidence before the Islamabad Consumer Court to prove the claim of damages for mental torture and agony, and litigation cost as claimed. It was, therefore, argued that the learned Islamabad Consumer Court has validly and justly decided the complaints vide the Impugned Judgment and Order and that the instant appeals are liable to be dismissed.

Referral by Single Bench to Division Bench

10. Initially, the instant criminal appeals were fixed before a Single Bench of this Court who disagreed with the earlier view taken in the case

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of *Ashfaq Ahmed Khan (Supra)* (followed by the learned Islamabad Consumer Court in rejecting the Appellants' claim of general damages) to the extent that it was held that under Section 9(3) of the Islamabad Consumer Protection Act, general or special damages cannot be awarded by the Consumer Court rather loss or damage actually suffered is to be considered as measuring factor to award the same to the consumer whereas general or special damages may be recovered by a suit filed in a civil court of competent jurisdiction. The relevant portion is reproduced as under:

> *"22. Compensation under Islamabad Consumer Protection Act, 1995 is only to be given in case of unfair trade practice, if proved after holding an enquiry by the Authority. However, the provision of Section 9(3) of the Act imposes restriction to award compensation upon the Authority only to the extent the consumer has suffered any damage or loss through the act of unfair trade practice, hence,* ***it can safely be concluded that under this law general damages cannot be awarded rather actually suffered loss or damage is to be considered as measuring factor to award the same only to the consumer.***
>
> *23. Consumer right to claim special or any other kind of damages under general law is protected notwithstanding the claim awarded by the Authority under Islamabad Consumer Protection Act, 1995, therefore, the consumer can file separate claim/suit in the Court of general jurisdiction for his relief." [Emphasis added].*

11. While following the principle settled in *M/s Multiline Associates vs. Ardeshir Cowasjee*, PLD 1995 SC 423, the Single Bench vide orders dated 09-02-2023 and 28-08-2023 referred the matter of interpretation of Section 9(3) of the Islamabad Consumer Protection Act to a larger bench which led to the constitution of this Division Bench by the Honorable Chief Justice. These cases have, therefore, been fixed before this Division Bench for an authoritative pronouncement of the law on the scope of section 9(3) of the Islamabad Consumer Protection Act, 1995.

Section 9(3) of the Islamabad Consumer Protection Act

12. Before going further, let us consider the provision under discussion i.e. Section 9(3) of the Islamabad Consumer Protection Act which is reproduced herein below:

> *9. Penalties.- (1) ...*
>
> *(2)...*
>
> *(3) The Authority may, where it deems appropriate, order for payment of compensation to the consumer to the extent the consumer has suffered* ***any damage or loss through any unfair trade practice****. [Emphasis added].*

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13. As may be seen from the above reproduction, Section 9(3) of the Islamabad Consumer Act empowers the learned Islamabad Consumer Court to order, where it deems appropriate, payment of compensation for *any damage or loss* suffered by the consumer. The only caveat is that the compensation that may be ordered is to the extent of damage or loss suffered by the consumer through any *'unfair trade practice'*. In other words, compensation may be granted only for the damage or loss suffered by the consumer as a consequence of any 'unfair trade practice' as defined in the Islamabad Consumer Protection Act and not for damage or loss incurred by the consumer for any act or omission which does not constitute an 'unfair trade practice' thereunder.

14. Next we must consider the use of the word 'any' appearing before the words 'damage or loss' in Section 9(3) *ibid* which is not without significance. To this end, we quote the following passage from the judgment rendered by the Indian Supreme Court in the case of *Lucknow Development Authority v. M.K. Gupta*, AIR 1994 Supreme Court 787 wherein the word 'any' as used in the definition of 'service' in the erstwhile Consumer Protection Act, 1986[1] in force and effect in India came under discussion and it was held that the word 'any' is of wide amplitude:

> *"4. ...*
>
> *Clause (o) of the definition section defines it as under:*
>
> > *"Service" means service of **any** description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or loading or both (housing construction) entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under contract of personal service.*
> >
> > *It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause.*
> >
> > *The main clause itself is very wide. It applies to any service made available to potential users. **The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionary means 'one or same or all'. In Black's Law Dictionary it is explained thus, word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "same" or "one" and its meaning in a given statute depends upon the context and subject matter of the statute'. The use of the word 'any' in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all."** [Emphasis added].*

[1] *The Act of 1986 has been repealed by virtue of enactment of The Consumer Protection Act, 2019 and the repeal clause added therein.*

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15. Similarly, the word 'any' as used in Section 9 (3) of the Islamabad Consumer Protection Act before the words 'damage or loss' implies a wide scope of damages and loss and includes *all* or *every* damage or loss suffered by the consumer on account of 'unfair trade practice' (as defined in the Islamabad Consumer Protection Act).

Punjab Consumer Protection Act, 2005

16. The provisions of the Punjab Consumer Protection Act, 2005 serve as a useful comparison in this regard. Section 31 of the Punjab Consumer Protection Act, 2005 provides the actions the Punjab Consumer Court can order the defendant to take in the stipulated circumstances and is reproduced as follows:

> ***"31. Order of Consumer Court.–*** *If, after the proceedings conducted under this Act, the Consumer Court is satisfied that the products complained against suffer from any of the defects specified in the claim or that any or all of the allegations contained in the claim about the services provided are true, it shall issue an order to the defendant directing him to take one or more of the following actions, namely:-*
>
> *(a) to remove defect from the products in question;*
>
> *(b) to replace the products with new products of similar description which shall be free from any defect;*
>
> ***(c) to return to the claimant the price or, as the case may be, the charges paid by the claimant;***
>
> *(d) to do such other things as may be necessary for adequate and proper compliance with the requirements of this Act;*
>
> ***(e) to pay reasonable compensation to the consumer for any loss suffered by him due to the negligence of the defendant;***
>
> ***(f) to award damages where appropriate;***
>
> ***(g) to award actual costs including lawyers' fees incurred on the legal proceedings;***
>
> *(h) to recall the product from trade or commerce; (i) to confiscate or destroy the defective product;*
>
> *(j) to remedy the defect in such period as may be deemed fit; or*
>
> *(k) to cease to provide the defective or faulty service until it achieves the required standard." [Emphasis added].*

Examination of Section 31 of the Punjab Consumer Protection Act, 2005 reveals that price or charges paid by the claimant; compensation for loss; damages; and actual costs including lawyer's fees incurred on the legal proceedings are treated as separate and distinct remedies that can be ordered by the Punjab Consumer Court.

17. Insofar as price or charges paid by the claimant and damages are concerned, the Punjab Consumer Protection Act, 2005 contains certain parameters regarding the consumer's entitlement in terms of Sections 4,

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10, 13 and 15 which are reproduced as follows:

> ***4. Liability for defective products.-*** *(1) The manufacturer of a product shall be liable to a consumer* ***for damages proximately caused*** *by a characteristic of the product that renders the product defective when such damage arose from a reasonably anticipated use of the product by a consumer.*
>
> *(2) A product shall be defective only if-*
>
> *(a) it is defective in construction or composition as provided in section 5;*
>
> *(b) it is defective in design as provided in section 6;*
>
> *(c) it is defective because an adequate warning has not been given as provided in section 7; and*
>
> *(d) it is defective because it does not conform to an express warranty of the manufacturer as provided in section 8.*
>
> ***10. Restriction on grant of damages.-*** *Where the consumer has not suffered any damage from the product except the loss of utility,* ***the manufacturer shall not be liable for any damages except a return of the consideration or a part thereof and the costs.***
>
> ***13. Liability for faulty or defective services.-*** *A provider of services shall be liable to a consumer* ***for damages proximately caused*** *by the provision of services that have caused damage.*
>
> ***15. Restriction on grant of damages.-*** *Where the consumer has not suffered any damages from the provision of service except lack of benefit,* ***the service provider shall not be liable for any damages except a return of the consideration or a part thereof and the costs.*** *[Emphasis added].*

18. It is clear from Sections 10 and 15 of the Punjab Consumer Protection Act, 2005 that the consideration paid and cost incurred is a component of damages which is treated as a separate remedy only because it is the consumer's sole remedy in the stipulated circumstances.

19. In contradistinction thereto, the Islamabad Consumer Protection Act does not expressly restrict the recovery of damages to return of the consideration amount or cost incurred in any given circumstances rather it empowers the Consumer Court to order compensation for *any* damage or loss suffered through any unfair trade practice as may be deemed appropriate.

20. The definition of 'compensation' as per Black's Law Dictionary (6th Edition) has been relied upon in *Noman Ahmed and 14 others Vs. Capital Development Authority through Chairman and another,* PLD 2021 Islamabad 75 as follows:

> *" 26. The Black's Law Dictionary (6th Edition) defines the expressions 'compensation' and 'just compensation' as follows:*
>
> *"Compensation. Indemnification; payment of damages; making amends;* ***making whole;*** *giving an equivalent or substitute of equal value.* ***That which is necessary to restore an injured party to his former position.*** *Remuneration for services rendered, whether in salary, fees, or commissions. Consideration or price of a privilege purchased.*

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> *Equivalent in money for a loss sustained; equivalent given for property taken or for an injury done to another; giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value; recompense or reward for some loss, injury, or service, especially when it is given by statute; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or satisfaction for injury or damage of every description (including medical expense).* ***An act which a court orders to be done, or money which a court or other tribunal orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury.*** *Hughson Condensed Milk Co. v. State Board of Equalization, 23 Cal.App.2d 281, 73 P.2d 290, 292."[Emphasis added].*

21. Thus the concept of compensation or damages is to make the injured person whole or in other words as held in *Mehr Ashraf Vs. Station House Officer*, PLD 2022 Lahore 328 to restore him to the same position as he was in prior to the injury insofar as money can do so. Where a consumer has been a victim of an unfair trade practice he may not always be placed in the same position he occupied before he suffered the damage through the unfair trade practice merely by the return of the consideration he had paid.

22. The Lahore High Court in the case of *TCS (Private) Limited Vs. Mst. Haseena Begum*, PLD 2022 Lahore 524 has held special and general damages including for mental distress and agony recoverable under the Punjab Consumer Protection Act, 2005 where the facts and circumstances entitle the consumer to damages over and above the consideration paid. 'Loss' has been described as a generic term by the Supreme Court of India in *Consumer Unity & trust Society, Jaipur Vs. The Chairman & Managing Director, Bank of Baroda, Calcutta,* (1995) 2 SCC 150.

23. Thus, given the use of the word 'any' and the absence of any specific language curtailing the extent of damages or loss that may be ordered under the Islamabad Consumer Protection Act, the Consumer Court is empowered to award compensation to a consumer for any damages or loss suffered through any 'unfair trade practice' including but not limited to consideration paid provided the consumer is able to prove such damages.

24. *Ashfaq Ahmed Khan (Supra)* has already held that while adjudicating upon a complaint under the Islamabad Consumer Protection Act especially while awarding compensation in terms of Section 9(3) thereof the learned Court shall conduct an inquiry which includes:-

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*(a) Framing the points of determination/issues.*

*(b) Requiring oral evidence or evidence through affidavits.*

*(c) Allow parties to cross-examine the witnesses.*

*(d) Produce documentary evidence.*

*(e) Call record from any authority, company, office.*

*(f) Summon any expert witness to resolve the technical question of issue related to proposition in hand.*

*(g) Principles of Qanun-e-Shahadat Order, 1984, has to be applied.*

25. Since the plain language of Section 9(3) of the Islamabad Consumer Protection Act authorizes the learned Islamabad Consumer Court to award compensation for damage or loss without any restriction (except that it must be damage or loss suffered on account of any 'unfair trade practice') and the learned Islamabad Consumer Court may frame issues, record evidence, etc., there is no reason why the consideration paid may be recovered under the Islamabad Consumer Protection Act but not any other type of damage even if suffered on account of an unfair trade practice. To reach such conclusion would require reading into the statute language which is not there. However, as held in the case titled *Abdul Haq Khan Vs. Haji Ameerzada and others*, P L D 2017 SC 105 *'reading in of words or meaning into a statute when its meaning is otherwise clear is not permissible'.*

26. Refusal to exercise vested jurisdiction not only tends to defeat the purpose of conferring jurisdiction but also exposes litigants to unnecessary hardship, expenditure and multiplicity of proceedings. Reliance is placed upon *Noor Bibi and 13 others Vs. Meer Muhammad alias Meer Jan and 4 others*, 2018 CLC 87. Requiring the consumer to seek special and general damages for the same cause of action from a different forum will only lead to multiplicity of proceeding.

Litigation Cost

27. As far as the litigation cost claimed by the Appellants is concerned such costs by the very nature are actual costs awarded to reimburse the successful party for the expenses incurred by him as explained by the Supreme Court in the case of *Muhammad Akram Vs. Mst. Farman Bi,* PLD 1990 SC 28. It has been held in *Mehr Ashraf (Supra)* that the general rule is that costs follow the event and that according to Black's

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Law Dictionary costs is a pecuniary allowance made to the successful party for his expenses in prosecuting and defending an action. Therefore the learned Islamabad Consumer Court was not justified in refusing to allow the Appellants an opportunity to prove that they are entitled to compensation for damage or loss suffered by them allegedly on account of mental torture and agony, expenses, financial loss, and litigation cost.

28. In view of the foregoing, the instant appeals are **allowed** and the Impugned Judgment dated 20-10-2022 and Impugned Order dated 07-12-2022 are set-aside. The matters are remanded to the learned Consumer Court to record evidence in respect of the claim of the Appellants with regard to the general and special damages allegedly suffered by them on account of mental torture, shock, agony and financial loss and expenses, etc. and to render judgment with regard thereto.

**(MOHSIN AKHTAR KAYANI)**
**JUDGE**

**(SAMAN RAFAT IMTIAZ)**
**JUDGE**

**Announced in the open Court on the 3rd of June, 2024.**

**JUDGE** **JUDGE**

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