

9 KH
348
M919
α

Decision No. AK112/89

15 FEB 1990

Reference No. MVD 232/89

LIBRARY

IN THE MATTER of the Motor Vehicle
= Dealers Act 1975

AND

IN THE MATTER of a dispute

BETWEEN

[REDACTED]

Purchaser

AND

[REDACTED] (in
receivership)

Dealer

BEFORE THE AUCKLAND MOTOR VEHICLE DISPUTES TRIBUNAL

Messrs H T D Knight (Chairman)
R G Lewis
A E Enting

HEARING at HAMILTON on the 24th day of November 1989

APPEARANCES

[REDACTED] in person
[REDACTED] for dealer

DECISION

This claim arose out of the sale and purchase of a 1976 Holden station wagon on 7 March 1989. It was a category D vehicle for the purposes of the Act. The purchaser paid \$4,500 for the motor vehicle plus an additional amount for insurance. The odometer at the time the vehicle was purchased was 187,500 kms. By the time the complaint was made on 5 October 1989, the odometer reading had gone around the clock for the second time and was reading 37,981 kms. The high mileage was questioned with the purchaser at the hearing and she indicated that the vehicle had frequently travelled between Hamilton and Opotiki and Hamilton and Kaikohe because of the spread of the family's

relatives. The vehicle had in fact travelled a distance of approximately 7,000 kms a month.

The purchaser made a claim in respect of two matters. Firstly, an engine failure which occurred in September apparently six months after purchase and at a time when the vehicle would have travelled probably 40,000 kms but certainly no less than 30,000 kms. From the description of the failure given by the purchaser, it would appear that the timing gear failed.

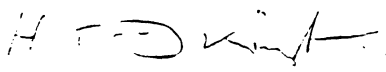
There was no evidence produced other than the purchaser's evidence of what occurred on the day of the failure. In any event, the Tribunal is of the view that it would be impossible to relate that failure at that time, after the considerable mileage that had been travelled, to the state of the vehicle as at the date of purchase. The Tribunal is therefore unable to find that because of that failure the vehicle was not of merchantable quality at the day that it was purchased some six months earlier.


The second complaint was that the car had a serious rust problem. The purchaser stated that on about the second time of opening, the tailgate hinge failed completely. She also stated that, some time after purchase, a child went through the floor when climbing over the back seat and when the purchaser lifted up the carpet, she found that the body of the vehicle was completely rusted through. The driver's seat also became detached and required welding which was done without cost at the son's access camp.


However, there was no evidence actually available that any of the rust problem was such that the vehicle should have failed the warrant of fitness that had been issued on it. In these circumstances, the Tribunal is not in a position to consider the quantum of any claim nor to establish the validity of such a claim.

The decision of the Tribunal therefore has to be that the purchaser has not established that the vehicle was not of merchantable quality as at the date of sale nor that the warrant of fitness on the vehicle as at the date of sale was not properly issued. These being the only two grounds upon which the purchaser could succeed in respect of a category D vehicle, the Tribunal has no option but to dismiss the purchaser's claim.

DATED at AUCKLAND this 11th day of December 1989


H T D Knight
Chairman


R G Lewis
Member


A E Enting
Member