

22 AUG 1989

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Decision No: Ch 27/89

M.V.D. No: 60/89

25 AUG 1988

IN THE MATTER of the Motor Vehicle Dealers Act 1975

AND

IN THE MATTER of a dispute

BETWEEN

Purchaser

AND

Dealer

BEFORE THE CHRISTCHURCH MOTOR VEHICLE DISPUTES TRIBUNAL

Mr J.G. Matthews - Chairman

Mr H.G. Hunt

Mr A.T.F. Beere

HEARING at CHRISTCHURCH on the 23rd day of May 1989

APPEARANCES

[REDACTED] - in person  
[REDACTED] - for the dealer

DECISION

[REDACTED] bought a 1982 Holden Camira from the dealer on 17 March 1988 when it had travelled 124,321 kilometres. He paid \$8,995.00.

In his complaint and in evidence he told us that over the first few months there were a series of problems with the car and he repeatedly had to return to the dealer to have them attended to. He said that on some occasions he had to take the car back several times in respect of a certain complaint and he felt that overall, his complaints had not been satisfactorily dealt with. There were delays and, no doubt, inconvenience, but it seems that by now all or most of the complaints except one have been resolved.

In any event, [REDACTED] made it clear to us that he was only complaining to the Tribunal about one specific matter and therefore it is on that matter that we make this decision. This is a complaint that the constant velocity joints in the car need replacing and we were presented with a quotation for the work from a Shell garage in [REDACTED] Road in the sum of \$970.00.

The complaint was lodged on 16 February 1989. Under section 98 of the Act complaints in relation to category D vehicles (which this was) must be lodged within 6 months of the date of purchase. This complaint was therefore 5 months out of time. We have jurisdiction to extend the time if, having regard to the interests of the other party to the dispute, we find it is just and reasonable that the dispute should be considered. Both parties were given the opportunity to comment on this in evidence, and ██████████ felt that it was fair that the time should be extended because during the first 6 months he had to complain about a lot of matters and at about the end of the first 6 months he gave the dealer a list of matters which were still wrong. He felt that list included the constant velocity joints but the dealer stated that was not so.

Having weighed up the evidence we are satisfied that the dealer is not adversely prejudiced by an extension of time and that it is fair that one should be granted. The time for lodging the complaint is therefore formally extended to 16 February 1989, the date upon which it was lodged.

As this was a category D vehicle as we have said, there was implied into the contract of sale a term that the motor vehicle was of merchantable quality and fit for the purpose for which vehicles of that type are usually used at the time of sale. In essence therefore, ██████████ complaint is that by reason of the faulty constant velocity joints this vehicle was not of merchantable quality at the time of sale.

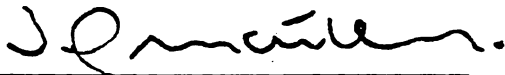
On the evidence, we are satisfied that the constant velocity joints now need replacing. We are also satisfied from ██████████ evidence that the joints have deteriorated over a period of time and have not suddenly gone wrong. However, it was also clear on his own evidence that the distinctive noise which indicates a problem of a constant velocity joint was not present at the time of purchase and did not arise until at least 3 months later. The dealer said that on his recollection the matter was not raised with him until about September, or some 6 months after the purchase. We note that the car had travelled just on 19,500 kilometres in the 11 months up to the time of the complaint. In response to a question ██████████ said he thought the car had travelled about 6,000 kilometres up to the time when the problem with the constant velocity joints arose. It has obviously become considerably worse now.

██████████, giving evidence for the dealer, said he thought the car had done about 10,000 kilometres before the matter was brought to his attention, so far as he can recollect. In essence, the dealer's defence to the complaint was that this was a matter of wear and tear and not a matter which had existed at the time of the purchase.

On the evidence we find that the problem with the constant velocity joints was not present to any appreciable extent, if at all, at the time of purchase. We are not satisfied that this car was not of merchantable quality at the time of purchase. In our opinion it arose at a later date after the car had travelled a considerable mileage and whilst there would undoubtedly have been some wear and tear in the constant velocity joints at the time of purchase, that is to be expected in a vehicle of this age and mileage and we find that the car was of merchantable quality in this regard at that time. We are supported in this view by the fact that since the time of purchase two warrants of fitness have been issued, the most recent only about 2 weeks ago, and the car also had a new warrant about 2 weeks old at the time of the purchase.

Accordingly we dismiss the complaint.

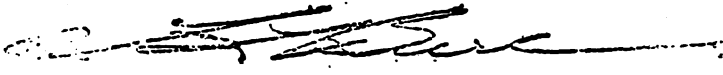
DATED at CHRISTCHURCH this 14<sup>th</sup> day of June 1989.



J.G. Matthews



H.G. Hunt



A.T.F. Beere