

2 KH  
348  
M919w

Decision No. WN 9/89

Reference No. MVD 272/88

IN THE MATTER of the Motor Vehicle  
Dealers Act 1975

AND

UNIVERSITY OF CANTERBURY

IN THE MATTER of a dispute

7 JUL 1989

BETWEEN

[REDACTED]

LIBRARY

Purchaser

143

AND

[REDACTED]

Dealer

BEFORE THE WELLINGTON MOTOR VEHICLE DISPUTES TRIBUNAL

R D Burnard - Chairman  
W A G Washbourn - Member  
D J Boyle - Member

HEARING at WELLINGTON on the 13th day of March 1989

APPEARANCES:

[REDACTED] in person  
[REDACTED] for Dealer

DECISION

[REDACTED] purchased a 1985 Suzuki SJ413 vehicle from [REDACTED]  
[REDACTED] on 6 July 1988 for a price of \$13,500. The  
vehicle had a Category A classification under the provisions of  
Part VII of the Motor Vehicle Dealers Act 1975.

[REDACTED] brings the complaint seeking recovery of two repair  
accounts totalling approximately \$790 for work carried out by  
[REDACTED] on his behalf in remedying a leak in the  
radiator and replacing the cylinder head gasket.

He told us that shortly after the warranty period of three  
months expired on the vehicle it started to overheat. He  
didn't immediately take the vehicle back to [REDACTED] as he  
had been dissatisfied with the company's approach to an earlier

*[Handwritten signature]*

problem whereby the vehicle was missing underload and he therefore arranged for the [REDACTED] to examine the vehicle on 17 October 1988. The three month warranty on the vehicle had expired on 6 October.

[REDACTED] discovered a hole in the radiator from which water was squirting when under pressure. [REDACTED] the Service Manager at [REDACTED] told us that the radiator was sent out for repair and the thermostat was replaced at a total cost of \$162.32. [REDACTED] also told us that his mechanic arranged to test for any sign of the head gasket having blown. This test did not indicate any combustion gasses in the cooling system and although the mechanic was suspicious of the presence of sludge under the oil filler cap the work carried out by the company at that point was confined to the radiator.

[REDACTED] told us that the overheating problems continued and on 28 October he returned the vehicle to [REDACTED] who diagnosed a blown head gasket. At [REDACTED] suggestion he took the vehicle to [REDACTED] where an estimate of \$300 to repair the engine was given. He declined to have the work carried out by [REDACTED] and the gasket was replaced and the cylinder head serviced through [REDACTED] at a further cost of \$628.84.

[REDACTED] in giving evidence told us that he had been informed by [REDACTED] that the reason the head gasket had blown was that there was a hole in one of the frost plugs.

For [REDACTED], [REDACTED] the Branch Manager of the company at Wellington gave evidence. He took the position that no defect in the vehicle had appeared in the warranty period. He pointed out that [REDACTED] had acknowledged that the vehicle had run well during the time of the warranty. [REDACTED] said that the hole in the radiator may have been caused by a stone and that once the vehicle overheated this could have given rise to the other damage leading to the necessity to change the head gasket.

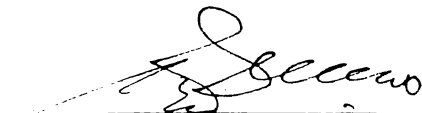
As [REDACTED] pointed out the obligation of a licensee selling a second-hand vehicle which has a Category A warranty is to repair any defect which "appears" in the vehicle during the warranty period. This obligation is set out at s.93(1) of the Act. We hold that this particular defect in the heating system of the engine did not appear during the warranty period and the purchaser is not able to recover the cost involved. The purchaser's own evidence was to the effect that the overheating did not manifest itself until outside the warranty and as we read the provisions of the Act the defect must manifest itself within the warranty period and it is not sufficient for the purchaser to be able to point to a part which showed signs of wear - the defect itself must become apparent.


For these reasons the complaint must fail. We also note that even if [REDACTED] had been able to satisfy us that the overheating problem appeared within the warranty period we


would have been unable to assist him by making an order that [REDACTED] pay the costs incurred at [REDACTED] because of the provisions of s.102 of the Act which provide that the Tribunal is not to make such an order unless written notice has been given to the licensee of the purchaser's intention to have the work carried out. Reference to this provision is contained in a boxed section under the Terms and Conditions on the reverse side of the Vehicle Offer and Sale Agreement which [REDACTED] signed.

The purchaser's complaint is accordingly dismissed.

DATED at WELLINGTON this 5<sup>th</sup> day of April 1989

  
R D Burnard

  
W A G Washbourn

  
D J Boyle

1436D