

22 AUG 1989 25 AUG 1989

Decision No. WN 22/89

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Reference No. MVD 19/89

IN THE MATTER of the Motor Vehicle
Dealers Act 1975

AND

IN THE MATTER of a disputeBETWEEN [REDACTED]Purchaser

AND [REDACTED]

DealerBEFORE THE WELLINGTON MOTOR VEHICLE DISPUTES TRIBUNALR D Burnard - Chairman
D J BoyleHEARING at PALMERSTON NORTH on the 26 day of June 1989APPEARANCES[REDACTED] for Purchaser
[REDACTED] for DealerDECISION

[REDACTED] purchased a 1977 Ford Cortina Stationwagon vehicle from [REDACTED] of Palmerston North on 18 September 1987 for a price of \$5,495. The vehicle came within the category D classification under the provisions of the Motor Vehicle Dealers Act 1975.

At the hearing at Palmerston North on 26 June 1989, [REDACTED] was not present but was represented by a work friend [REDACTED]. The dealer was represented by a director, [REDACTED] and at the commencement of our enquiry we sought the consent of the parties to the Tribunal sitting with only two members as the consumers representative was unable to be present having been involved in a motor vehicle accident on the previous day. Both parties consented to the complaint being heard by the Chairman and the dealers representative only.

[REDACTED] complaint is a short one. He said in the material accompanying the complaint and repeated through [REDACTED] that at the time he purchased the vehicle he had been told by the dealer that the vehicle had travelled 107,000 kilometres whereas when he obtained the Certificate of Registration having paid off hire purchase finance on the vehicle he discovered

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that in fact it had travelled 207,000 kilometres. A declaration was produced from a previous owner of the vehicle who had brought the car with the speedometer reading approximately 50,000 kilometres and who stated he had travelled 100,000 kilometres. Later entries on the Certificate of Registration present a confusing picture but it does appear likely that in fact the vehicle had travelled the higher mileage.

██████████ said in evidence that he could not now recall the precise details of his conversation with ██████████ but that he could not recall having ever stated that the vehicle had done 107,000 kilometres. He said that he made a practise of not representing the mileage of vehicles as there are often inaccuracies in the speedometers and he always recorded the reading on the odometer and left it at that. He said that he brought the vehicle from ██████████ who were Ford dealers - it was not a case of the vehicle being traded in with his company and he purchased the vehicle because of its condition. He said that he would have paid the same price for it and have asked the same retail price whether the distance travelled had been 107,000 kilometres or 207,000 kilometres.

██████████ told us that when ██████████ made his complaint, ██████████ was concerned that a Dannevirke dealer who had offered \$2,500 as a trade in on the Ford Cortina six or eight months ago would pay a lower price when he discovered the true mileage and to meet this position ██████████ was prepared to obtain the vehicle ██████████ wanted to buy and allow ██████████ a trade in price of \$2,500 on the Ford Cortina. ██████████ did not come back to ██████████ on this proposal.

Under the Motor Vehicle Dealers Act 1975 this Tribunal is established only to hear the categories of disputes set out in s.96 of the Act and our jurisdiction is limited to the provisions of part VII of that Act. In a complaint of the nature made by ██████████ our jurisdiction is confined to enquiring whether there has been an allegation made out in terms of s.101(1) of the Act which reads as follows:

"Determination of disputes alleging motor vehicle substantially different from that represented-

1. **Where any dispute referred to a Disputes Tribunal under section 96 of this Act involves an allegation that a secondhand motor vehicle (not being a commercial vehicle) as sold by the licensee to the purchaser is substantially different from the vehicle as represented in the notice attached to it in purported compliance with section 90 of this Act, the Tribunal may, if it is satisfied that the vehicle is substantially different as aforesaid,-**
 - (a) **Order that the contract of sale be rescinded in accordance with this section; or**
 - (b) **Where, having regard to all the circumstances of the case, it considers that such an order for rescission would be unwarranted or unjust, order**

the licensee to pay to the purchaser, or to any other person claiming through the purchaser, such sum (not exceeding \$3,000) as the Tribunal thinks just by way of compensation in respect of the difference in value between the vehicle as represented in the said notice and the vehicle as sold by the licensee,-

and, in either such case, the Tribunal may make such further or consequential order as it thinks fit."

It will be noted that where a secondhand vehicle is sold by licensee to a purchaser and it is established that the vehicle is substantially different from the way it is represented in the notice attached to it then the contract may be rescinded or compensation awarded to the purchaser. The requirements for the completion of notices attached to vehicles are set out in section 90 of the Act and in that section it is required by subsection 2(b) to record the reading on the odometer at the time the vehicle was displayed for sale.

In the present case there is no dispute between the parties that the dealer has in fact completed on the window notice the reading on the odometer at the time the vehicle was displayed for sale of 07168 kilometres.

It thus cannot be said that the vehicle as represented in the notice is substantially different from the vehicle as sold to [REDACTED] and accordingly no complaint can be made out under the provisions of s.101.

We consider that it is only fair to the parties for us to also record that we do not believe that [REDACTED] knowingly misrepresented the distance travelled by this vehicle. We accept his evidence that he purchased the vehicle having regard to its condition and without knowing the ownership history.

As no complaint is made out that the vehicle was substantially different from the way it was represented on the window notice we have no alternative but to dismiss this complaint.

DATED at WELLINGTON this 28th day of July 1989



 R D Burnard



 D J Boyle

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