

22 AUG 1989

Decision No. WN 24189

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Reference No. MVD 20/89

IN THE MATTER of the Motor Vehicle  
Dealers Act 1975ANDIN THE MATTER of a disputeBETWEEN [REDACTED]PurchaserAND [REDACTED]DealerBEFORE THE WELLINGTON MOTOR VEHICLE DISPUTES TRIBUNALR D Burnard - Chairman  
W A G Washbourn  
D J BoyleHEARING at NAPIER on the 27 day of June 1989APPEARANCES[REDACTED] in person  
for DealerDECISION

[REDACTED] with his wife purchased a 1984 Subaru automatic vehicle from [REDACTED] on 16 June 1988. The vehicle had a category A warranty under the provisions of Part VII of the Motor Vehicle Dealers Act 1975.

[REDACTED] told us that as he drove the vehicle home from the dealership on the day of the purchase he noticed a knock in the engine. He complained immediately to the dealer whose foreman a [REDACTED] checked the vehicle and agreed there was an engine fault. [REDACTED] also took the vehicle to the AA who confirmed [REDACTED] own opinion that the noise was a gudgeon noise. The purchase took place on the 16 June but unfortunately for [REDACTED] the company [REDACTED] was placed in receivership 12 days later with two accountants being appointed receivers. The receivers were not represented

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at the hearing but [REDACTED] Managing Director of the Company appeared and gave evidence.

He told us that if the company had remained trading it would have attended to the engine fault but the receivers had closed the company down and directed that all vehicles be sold so that within approximately 14 days of the receivership there was no one left at the yard.

[REDACTED] told us that with the Company being placed in receivership he did not know where to turn and waited for a period to ascertain who would obtain the Subaru franchise. He learnt that [REDACTED] of Napier would take over the Subaru agency and therefore took the vehicle to that company. [REDACTED] initially approached [REDACTED] of Auckland to enquire whether the vehicle would be repaired at the manufacturer's expense in view of the unusual engine problem at a comparatively low mileage. [REDACTED] was eventually informed that after contact with Subaru Motors in Japan the Company would not meet the cost and he was left with no alternative but to have the substantial engine work carried out by [REDACTED]. He produced a number of accounts from that Company but sought recovery only of 3 accounts totalling \$2,056.95 which relate to remedying the gudgeon noise. These accounts have receipts attached evidencing payment of the full amount by [REDACTED]

On 21 November 1988 [REDACTED] completed a complaint form with the Motor Vehicle Dealers Institute seeking recovery of his loss.

[REDACTED] gave evidence. He commented that when the complaint was brought to his Company's attention immediately after the sale the foreman wanted to check the vehicle to decide which of several possible engine faults existed. However the receivership intervened and [REDACTED] commented [REDACTED] like a number of other clients of the Company was "left high and dry". [REDACTED] stated that he considered [REDACTED] had a proper claim against the Motor Vehicle Dealers Fidelity Guarantee Fund.

We are satisfied that a defect appeared in this vehicle during the warranty period which the licensee had an obligation under s.93 of the Act to repair or make good. The Tribunal is satisfied in terms of subsection 1 of s.102 of the Act that the licensee failed to carry out the obligation imposed on him by s.93. Were we permitted to do so by that subsection we would have made an order requiring the licensee to pay to the purchaser the reasonable costs incurred by the purchaser in respect of the work in repairing the gudgeon noise namely the total of the 3 accounts at [REDACTED] of \$2,056.95. We are prevented from making such an order however by reason of the proviso to s.102(1)(b) which reads as follows:


*"Provided that a Disputes Tribunal shall not make an order under this paragraph unless it is satisfied that, before*

the purchaser had the necessary work done, he gave written notice of his intention to do so to the licensee (or, where the sale took place at a branch office, to the branch manager), and gave the licensee (or branch manager) a reasonable opportunity to inspect the motor vehicle."

██████████ did not give written notice to the licensee before having the work done at ██████████. In fact the dealer was no longer licensed as ██████████ told us that he had surrendered the licence within a few days of the Company being placed in receivership. In addition there was no one at the yard whom ██████████ could give notice to.

In terms of s.40 of the Act we find that ██████████ has suffered loss to the extent of \$2,056.95 by reason of the failure of the dealer to carry out the obligations imposed on him by s.93 of the Act and ██████████ should make application to the Motor Vehicle Dealers Fidelity Guarantee Fund through the Motor Vehicle Dealers Institute within 3 months of the date of determination of this Tribunal. The application should be directed to the Motor Vehicle Dealers Institute at P O Box 9244 Wellington.

DATED at WELLINGTON this 8TH day of August 1989

  
R D Burnard

  
D J Boyle

  
W A G Washbourn