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Decision No. WN 25/89 LIBRARY

Reference No. MVD 81/89

IN THE MATTER of the Motor Vehicle Dealers Act 1975

AND

IN THE MATTER of a dispute

BETWEEN [REDACTED]  
Purchaser

AND [REDACTED]  
Dealer

BEFORE THE WELLINGTON MOTOR VEHICLE DISPUTES TRIBUNAL

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

HEARING at NAPIER on the 28 day of June 1989

APPEARANCES

[REDACTED] in person  
[REDACTED] for Dealer

DECISION

This complaint relates to the purchase by [REDACTED] of a Mazda B1600 vehicle from [REDACTED] of Hastings on 8 December 1988 for a price of \$3,290.00.

[REDACTED] complaint is a short one. The window notice attached to the vehicle in purported compliance with s.90 of the Motor Vehicle Dealers Act 1975 records that the vehicle was first registered in 1978. [REDACTED] was concerned when he received the ownership papers some two months after the purchase to find that the vehicle had in fact been first registered in 1977. He told us that he believed that as a 1977 model the vehicle was worth \$200.00 less and he sought compensation from the dealer for this mistake.

QB M

For [REDACTED] the assistant manager at Hastings [REDACTED] gave evidence. He produced a copy of a statement from the previous owner recording the details of the vehicle which he said the company obtains when someone selling the vehicle does not have the ownership papers. This statement recorded the first year of registration of the vehicle at 1978. [REDACTED] said that his company had priced the vehicle according to its age and general condition and that the difference between a 1977 and 1978 vehicle was immaterial as it would have been priced at \$3,290 which ever year was correct. He said that normally a 1977 Mazda B1600 would have sold for between \$4,000 and \$5,000 but this vehicle is not in good condition and was sold as a "Commercial Special". Because of its condition it was taken to the Ministry of Transport testing station for a warrant of fitness before being sold to [REDACTED]

[REDACTED] said he had tried to reach an accommodation with [REDACTED] but had been unable to do so.

Under the provisions of the Motor Vehicle Dealers Act this Tribunal is established to deal with certain categories of complaints which are listed at s.96. This particular complaint falls within the provisions of s.96(1)(b) of the Act which refers to the cause of action established by s.101(1) 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 should be noted that where a vehicle as sold by the licensee

to the purchaser is substantially different from the vehicle represented in the notice the Tribunal may rescind the contract or award compensation in respect of the difference in value between the vehicle as represented and the vehicle as sold.

Before providing the purchaser with a remedy it is necessary for the Tribunal to be satisfied that the vehicle is substantially different.

There is a plain difference between the notice and the vehicle in the present case by reason of the year of registration. We are not satisfied however that this is a substantial difference. Whilst in previous cases the Tribunal has held that with late model low mileage vehicles a difference of one year in the year of registration may lead to a finding that the vehicle is substantially different this particular vehicle was 11 years old at the date of the sale having been represented as 10 years old. We accept [REDACTED] evidence that the vehicle was priced according to its condition and not the year of registration so that in our opinion there was no difference in value between the vehicle as represented in the notice and the vehicle as sold. While different from the notice it was not in our opinion substantially different.

It follows that [REDACTED] complaint must be dismissed.

DATED at WELLINGTON this 8TH day of AUGUST 1989

  
R D Burnard

  
D J Boyle

  
W A G Washbourn