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Decision No. WN 48/89

Reference No. MVD 182/89

IN THE MATTER of the Motor Vehicle
Dealers Act 1975

AND

UNIVERSITY OF CANTERBURY

IN THE MATTER of a dispute 15 FEB 1990

BETWEEN

[REDACTED]

LIBRARY 27 FEB 1990

Purchaser

AND

[REDACTED]

Dealer

BEFORE THE CHRISTCHURCH MOTOR VEHICLE DISPUTES TRIBUNAL

J G Matthews - Chairman
H G Hunt
A F T Beere

HEARING at WANGANUI on the 28th day of November 1989

APPEARANCES:

[REDACTED] in person
[REDACTED] for dealer

DECISION

[REDACTED] bought a 1978 Holden Sunbird from the dealer on 12 May 1989 it was a category D motor vehicle.

Prior to the purchase the dealer had repowered the vehicle, originally a 4 cylinder model, with a 6 cylinder motor. It was pointed out to the purchasers that they must run the vehicle in because it had not had much use since the work was done. Although some untoward noises were noticed while they were test driving the vehicle they went ahead with the purchase but almost immediately after they picked up the car a substantial noise developed in the gear box. The car was returned to the dealer and the gear box was removed and a reconditioned one was installed.

The complaint was made because although the dealer had put in a 6 cylinder motor and a reconditioned gear box no work had been carried out on the differential which remained as the unit originally designed for the 4 cylinder motor. The consequence of this, we were told, was that the car used excessive petrol and also vibrated as soon as 85 kilometres per hour was reached. This difficulty was not discovered for some time as the car was being run in but became apparent as soon as the purchasers felt they could travel at a reasonable speed. The purchasers evidence was that the dealer declined to put in a different differential suitable for the 6 cylinder power unit though the dealer felt he had been prepared to negotiate. The purchasers said that the dealer had indicated that it would cost up to \$250.00 to do the work but that he required them to pay it and they declined to do this.

As this was a category D car there was implied into the contract of sale by section 93(2) of the Motor Vehicle Dealers Act 1975 a term that the vehicle be of merchantable quality and fit for the purpose for which vehicles of this type are usually used. We consider a number of cases of this kind and have prepared a schedule which sets out the way in which we approach this sort of determination. A copy of this schedule is annexed to this decision and forms part of it.

Approaching this case in the way indicated in the schedule we find that this car was not of merchantable quality at the time of purchase and reasonably fit for the purpose for which vehicles of this type are usually used. The evidence on the matter of fuel consumption was not particularly helpful but we accept that there would be over-revving and vibration in a vehicle with a drive train unsuited to the motor which was fitted, as this one was.

Having made this finding we have certain powers under the Act to make orders in favour of the purchaser. The evidence on the amount required in monetary terms to remedy the problem varied substantially. On the one hand we have the dealers estimates originally given to the purchasers of \$250.00 which, at the hearing, he increased to \$300.00 or perhaps slightly more. On the other hand the purchaser produced to us a written quote from [REDACTED], the [REDACTED] Dealer, for \$1,735.20. The dealers estimates were based on using used parts from a wreckers and carrying out the work in his own workshop. The purchasers quote was based on brand new parts bought direct from the [REDACTED].

We have given careful consideration to the way in which we should approach an order in favour of the purchaser. If the purchaser had the work specified by [REDACTED] carried out he would of course have a brand new assembly fitted in a reasonably old car. Compensation for the purchaser to that level is not warranted. If the vehicle had had the correct assembly in it at the time of purchase, but one which had travelled a similar mileage to the rest of the vehicle,

then the problem would not have arisen. In short he is only entitled to be compensated to the point where he is returned to the position that he might reasonably have expected to have been in at the time of purchase.--

We accept the dealers evidence that a replacement assembly including axles, differentials and related parts could be purchased from a wrecker with a 6 month warranty for a much more reasonable sum than new parts could be obtained for. The dealer felt a reasonable purchase price would be \$150.00. That price might not in fact be available to the purchaser buying other than through the trade. In addition, of course, he will have to pay labour and related expenses to have the parts installed in his car. Taking into account all factors we have decided to award compensation to the purchaser in the sum of \$600.00. That will enable the purchaser to obtain the necessary axle and differential assembly together with any related parts that might be required and install them in the car.

The formal order of the Tribunal is that the dealer is to pay to the purchaser the sum of \$600.00 by way of compensation.

DATED at WELLINGTON this 20th day of December 1989



J G Matthews



H G Hunt



A F T Beere

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