Decision No. AK 23/89

Reference No. MVD 43/89

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 AUCKLAND MOTOR VEHICLE DISPUTES TRIBUNAL

Messrs H T D Knight (Chairman)
R G Lewis
A E Enting

HEARING at AUCKLAND on the 31st day of March 1989

APPEARANCES

[redacted] in person
[redacted] for dealer

## DECISION

This complaint was somewhat unusual in that the purchaser of two cars was involved in the complaint. The purchaser had firstly in October 1988 purchased a Mazda RX7 1978 motorcar for $16,300. The purchaser took the vehicle back to Gisborne where certain repairs were carried out to it, those being:

1. Tune-up and oil change $167.37

2. Realigning of the rear brakes - just a realignment and some attention to electrical problems $542.84

3. Followed by a further adjustment of the wheel alignment, the wheel balance $ 83.98

The Tribunal understands that those accounts were paid for by the licensee. It would appear that at the time of the last repair it was found that the chassis was not straight.

The purchaser produced two affidavits. One from an automotive electrical engineer indicated that there was a steering problem and that the chassis required repair. There were other defects, namely charging problems caused by a faulty voltage regulator and acceleration problems causing the vehicle to shudder and backfire.

The second opinion from a service manager of a local garage again indicated there was a problem with the wheel alignment and he had found that the right hand chassis rail had crumpled. It was his opinion that this was likely to have occurred in a collision. He stated that his firm was unable to straighten the chassis rail correctly.

The purchaser gave evidence that he had then brought the vehicle back to the licensee in Auckland because he was dissatisfied and concerned about the vehicle particularly the chassis problem. The purchaser and the licensee then apparently spent all day trying to reach an agreement on the matter and in particular a replacement car.

The result of those discussions was that the purchaser entered into an agreement with the licensee on 23 December 1988 to purchase from the licensee a Mitsubishi motorcar for the sum of $11,000. The purchaser's first vehicle was traded in at a price of $12,500 and after the lien on the car was deducted at $7,750 he was given an equity credit towards the purchase of $11,000 of $4,750. It appears that the purchaser is now dissatisfied with the amount that was allowed for the trade-in on the Mazda RX which he had previously purchased for $16,300. However the Tribunal has no jurisdiction over the price given for trade-ins.

The Tribunal considered that it might have been able to assist the purchaser by going back and considering whether the first vehicle was of merchantable quality and if it was not of merchantable quality, whether a rescission order could be made in respect of that first contract. However, unfortunately for the purchaser, to make such an order the Tribunal would have to do so under s.102A(c) of the Motor Vehicle Dealers Act 1975. Such an order for rescission could only be done on the basis that section 101 of the Act would apply. Section 101 of the Act gives the Tribunal power to make an order for rescission provided it is satisfied that the value of the vehicle does not exceed $8,000.

There was a lengthy discussion between the parties before the Tribunal each taking the side that the vehicle was worth either more or less than $8,000.

The licensee produced to the Tribunal a report dated 30 March 1989 in respect of the Mazda which showed there were some defects present, but in the Tribunal's view they were not sufficient to reduce the price of $16,000, or $12,500 as allowed on the trade-in, to under $8,000.

The licensee also produced from a wheel alignment specialist a quotation for repairing the chassis damage, the estimate being that it would cost approximately $250. That amount also would not have taken the value of the vehicle down below $8,000. The Tribunal notes that the AA report noted a chassis problem and a braking problem, one or other of which was causing the vehicle to pull to the right under heavy braking. It is possible that the chassis repair could have corrected that fault. If not, there would have been another repair required to the brakes but it would not have been for a significant amount.

Bearing all those factors in mind, the Tribunal is unable to be satisfied that the vehicle is worth under $8,000 and therefore within its jurisdiction. It is to be noted that there is no power for the Tribunal or the parties to extend the jurisdiction under section 101 or 102A of the Act as there would be in respect of the $3,000 limit for compensation which is normally applied to repairs under section 98 of the Act.

The purchaser then raised with the Tribunal the question of the second purchase and in particular a report from a Gisborne garage indicating there was a burnt valve in no. 3 cylinder and this would cost approximately $520 to repair. It is to be noted that at the time that that report was given the vehicle had travelled 3,000 kilometres since purchase and the mileage read 64,938 kms. The Tribunal would be unable to say whether or not the burnt valve was present as at the day of purchase because it has not seen the part. Even if it was to see the part, it is unlikely that it would be able to draw that assumption, if that is the problem, after so many kilometres had been travelled.

The matter was referred to the licensee, he did not wish to have the vehicle stripped because he did not consider he had any responsibility for it. However he indicated to the Tribunal that he would waive any questions or written notice to be given before the repairs are carried out. The purchaser is able, should he wish to do so, if he considers he can prove that the burnt valve related back to the day of purchase, to bring another complaint in respect of that second car.

The purchaser also produced a toll account for various tolls that he was involved in one way or another. He actually produced three accounts covering the period. However the Tribunal is a statutory tribunal which only has a limited jurisdiction and limited matters it can consider and these did

in its opinion allow it to consider a claim in respect of toll calls. In any event, it was unable to order a rescission in respect of the first transaction because it did not have jurisdiction.

There was no evidence that the second car was not of merchantable quality and although the purchaser could bring that claim at a later date, even if successful, the Tribunal does not consider that it would have jurisdiction to award the toll account.

The Tribunal has no option but to dismiss the purchaser's claim in respect of the first vehicle because it does not have the jurisdiction to consider it, and in respect of the second vehicle because there was insufficient evidence before it in respect of that matter. It notes that the vehicle had been driven up to Auckland apparently from Gisborne with the burnt valve which would be another factor which would make it very difficult for the purchaser to establish that as at the date of purchase the vehicle was not of merchantable quality. The Tribunal notes also that after the hearing the purchaser was advised that the car should be repaired in Auckland and not be driven back to Gisborne in that state.

However, the formal order of the Tribunal must be that in respect of the first and second transactions on the basis they have been heard, the purchaser's complaints are dismissed.

**DATED** at AUCKLAND this 5th day of May 1989

H T D Knight
Chairman

R G Lewis
Member

A E Enting
Member