

7 JUL 1989

Decision No. AK 24/89

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Reference No. MVD 34/89

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] of purchaser
[REDACTED] for dealer

DECISION

The hearing in this matter was set down for 10.00 am on 31 March 1989. The purchaser who had received a notice of hearing did not appear at 10.00 am nor was he present by 10.50 am so the matter proceeded in his absence.

The purchaser's complaint was that he had purchased a 1985 Toyota Corona motorcar on 19 December 1988. It was a category D warranty vehicle so that it was required to have a warrant of fitness on it that had been properly issued and also to be of merchantable quality and reasonably fit for its purpose.

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The purchaser stated in his complaint that three weeks after purchase, the car overheated due to the radiator having a leak and major engine damage was caused. The car had had a pre-purchase check by an independent mechanic. The report had shown that the radiator was "crossed" as being faulty. On the other hand the only comment on the form was that the radiator had no water in it.

Had there been an actual fault in the radiator, the Tribunal would have expected that the independent mechanic reporting would have nominated the actual fault. Therefore from that report it appears that the only thing which was wrong was that the radiator had not been filled.

The licensee produced an invoice for a check which had been made by them on 9 December 1988 for radiator leaks. The licensee was charged a total of \$27.50 plus GST for a radiator check and it was stated by that report to be in order and that the hoses also were in order. There was evidence that prior to the sale the radiator had been checked and was found to be correct and at the time of sale it was again checked by an independent mechanic who had noted only that it was empty and not that there was any particular fault in it.

The licensee's evidence was that they received a call from the purchaser after he had travelled a distance of 1,358 kilometres and he said that the car had seized up. The purchaser then explained, as he had confirmed in his complaint to the licensee, that he had not checked the water in the meantime. The Tribunal would have thought that in fact if the radiator was empty at the date of purchase this would have been a matter for some concern and he would have been put on notice to check the water level regularly.

In the circumstances, and having regard to the evidence to the contrary that the radiator was in fact in order two days prior to purchase, the Tribunal has no option but to dismiss the purchaser's complaint which it does.


DATED at AUCKLAND this 5th day of May 1989



H T D Knight
Chairman



R G Lewis
Member



A E Enting
Member