Decision No. AK 27/89

Reference No. MVD 33/89

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 30th day of March 1989

APPEARANCES

[redacted] in person
[redacted] for dealer

DECISION

This complaint arose out of the sale and purchase of a 1972 Datsun GN 521 truck on 9 September 1988. The vehicle for the purpose of the Act would have been a commercial vehicle for which the licensee is not required to give any warranty category at all. This fact was pointed out to the licensee at the beginning of the hearing. However [redacted] on behalf of the licensee stated that they always sold these vehicles with a category D warranty and dealt with it on that basis. The Chairman asked him whether he wished the hearing to proceed on the basis that a category D vehicle was in fact applicable to

this particular vehicle and he said yes that was as he had sold it.

The hearing therefore proceeded on the basis that the vehicle was in fact a category D motor vehicle for the purpose of the Act which, as [redacted] pointed out, required that it should have a current warrant of fitness properly issued and that it should also be of merchantable quality and reasonably fit for its purpose.

The vehicle was sold for the sum of $4,000 and on the window card at the time of the sale there was the statement that the motor had been overhauled. The licensee explained he had told the purchaser at the time of purchase that the vehicle had rings and bearings replaced.

The purchaser and his son who is a qualified mechanic, although he has not been working as such for some time, gave evidence in respect to the matter. Both the purchaser and son gave evidence of having heard from the time of purchase a dull knocking noise at the lower end of the motor. It was more noticeable when the vehicle was cold. When the motor was started, either hot or cold, the oil light was slow to go out. The licensee gave evidence that he accepted that behaviour in respect to the oil light indicating that there was low pressure.

The purchaser's evidence also was that, just on 1,000 miles, the vehicle had started to smoke, he apparently did not ring the licensee about it for some time. He says at least two weeks afterwards. The licensee did not hear anything for three months.

The purchaser gave the licensee notice that he was going to have the vehicle's engine disassembled and that he was welcome to come up and inspect the parts, but he did not do so until two days prior to the hearing, by which time a replacement motor had been purchased for the vehicle and installed. The cost of the replacement motor was $800, the labour having been provided without charge by the son. The purchaser complained that he had other losses but limited his claim to the sum of $800. Parts were in fact produced to the Tribunal by the purchaser's son who also gave a detailed report. From the parts which have been produced and the son's evidence it is clear that the following damage had occurred to the engine:

(a) There was a broken oil ring on no. 3 piston.

(b) The no. 3 big end shells had been badly scored.

(c) There was also evidence of scoring to a lesser degree on the other shells.

(d) Evidence of additional and other wear in the motor.

Having regard to all the evidence, the Tribunal is satisfied that, on the balance of probabilities, at the time the motor

was repaired prior to sale, an oil ring was damaged upon assembly and that the big end bearing at no. 3 also suffered damage.

The Tribunal does not accept the licensee's contention that the damage which occurred could have occurred upon disassembly by the purchaser's mechanic having regard to the consistent nature of the wear in the motor. It obviously occurred during the operation of the motor not upon disassembly. The Tribunal, having considered the evidence of the purchaser and the parts, and having taken into account the submissions of the licensee, is satisfied that as at the date of purchase, the vehicle was not of merchantable quality nor reasonably fit for its purpose because of the damage which occurred to it when the vehicle was being repaired prior to purchase.

The Tribunal is by virtue of section 102A of the Motor Vehicle Dealers Act 1975, and in particular 102A(1)(b), able to order that the licensee pay to the purchaser such sum by way of compensation for the breach of the implied term, that the vehicle will be of merchantable quality and reasonably fit for its purpose, as the Tribunal thinks fit.

The Tribunal has taken into account the evidence it has heard, the parts it has seen, and it considers that an appropriate and just amount to award by way of compensation for the breach is the sum of $500.

It therefore orders that the licensee should pay to the purchaser the sum of $500. The Tribunal should mention that the licensee has raised the fact that within two weeks of the date of the sale, he had ceased trading as a licensed motor vehicle dealer. However the Tribunal is of the view that that cannot possibly abnegate his obligations under the Act during the time in which he was trading.

DATED at AUCKLAND this 5th day of May 1989

H T D Knight
Chairman

R G Lewis
Member

A E Enting
Member