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Decision No. AK 31/89

Reference No. MVD 271/88

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 2nd day of March 1989

APPEARANCES

[REDACTED] in person  
[REDACTED] for dealer

DECISION

This matter was initially heard on 2 March 1989. The dispute came down to a question of whether or not the warrant of fitness at the time of purchase had been properly issued. The car was required to have on it at the time of sale a warrant of fitness that had been properly issued.

The licensee at the hearing defended the matter on several grounds but one of the main ones was that the vehicle could have been damaged on a kerb.

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The Tribunal asked that the vehicle be taken to the AA for inspection by the purchaser and the licensee was offered the opportunity of accompanying the purchaser so that he could be present at the time. He declined that invitation and a report was brought back to the Tribunal by the purchaser dated 2 March 1989. It indicates that the vehicle was given an exhaust system inspection and the following was found to be the condition:

1. Intermediate muffler totally corroded at inlet - requires replacement.
2. Front muffler starting to corrode at inlet - may repair but will require replacement soon.
3. Rear muffler appears almost new.

No physical kerb damage evident.

At the hearing the purchaser was asked to obtain other evidence in respect of the matter and in particular a Takapuna Testing Station statement as to why the vehicle failed a warrant of fitness on 10 November shortly after purchase on the 2nd.

The note received from the testing station confirmed the initial pit check by the inspector which found that the exhaust system was leaking and therefore not up to warrant of fitness standard.

The purchaser was also asked to obtain a report from the specialist to whom she had taken the vehicle. The manager of [REDACTED] explained that on 10 November 1988 (which is the same day the vehicle failed at the testing station) he found "that both the front and centre mufflers were unserviceable and needed replacement". They were both passed repairing. The metal was very badly corroded, with fairly large holes in the ends of both mufflers. Good trade practice for mufflers in this condition is total replacement.

The warrant of fitness was issued by BNH Engine Services on 1 November 1988. The letter went on to say that he again viewed the car on 28 February 1989 and that condition was very similar to that viewed on 10 November 1988. Again the customers were told that both mufflers needed total replacement.

The licensee had the opportunity to review these reports and it would appear from his letter dated 5 April 1989 that he relies upon the fact that a warrant was issued and the fact that the testing station had made an error in respect of the vehicle having a fault in a right hand tie rod.

Upon the question of the exhaust, the testing station's opinion is supported by a report of the exhaust specialist who saw the vehicle on the same day and said that both mufflers needed replacing.

The licensee also states that it was an elementary fact that the internal combustion engine can misfire and cause immediate irreparable damage to exhaust systems regardless of the structural condition of the system. That is not accepted by the Tribunal. The exhaust system would have to be in a bad state of repair for immediate damage to be caused to it, and there is no evidence of misfiring occurring to this vehicle in the evidence that has been presented to the Tribunal.

Having regard to all the evidence in this matter the Tribunal is of the view that as at the date of sale the warrant of fitness issued was not a properly issued warrant and that a proper inspection was not carried out of the muffler system. It accepts the evidence of the testing station and also the exhaust specialists. In the circumstances, there will be an order that the licensee should pay to the purchaser the cost of having this vehicle repaired.

The Tribunal finds that the licensee has failed to carry out its obligation in terms of section 102 of the Act and therefore makes an order authorising the purchaser to cause the work that is required to be done, namely the repair of the intermediate and front mufflers, by their replacement and such repairs are to be carried out by [REDACTED] to a total cost of \$415.00.

If the licensee fails to make payment of the amount hereby ordered after the repairs have been carried out and the account duly presented to him, then the purchaser is able to have the order registered in the District Court and enforced in that court as if it is a judgment of that court.

DATED at AUCKLAND this 17th day of May 1989



H T D Knight  
Chairman



R G Lewis  
Member



A E Enting  
Member