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Decision No. AK 4/89

7 JUL 1989

Reference No. MVD 7/89

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14 JUL 1989

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 HAMILTON on the 24th day of February 1989

APPEARANCES

[REDACTED] for purchaser
[REDACTED] for dealer

DECISION

This dispute arose out of the sale and purchase of a 1976 Mazda 929 station wagon on 11 November 1988. The purchaser, [REDACTED], was unable to attend the hearing because she had recently given birth. [REDACTED] therefore conducted the case. The complaint was that, on the day of purchase a noise was noticed from the area of the exhaust in that it sounded like a loose flange. This did not give him great cause for concern, however during the next week, the exhaust came apart at the front end. The purchaser said he went back to the licensee and spoke to the proprietor himself. The proprietor told him that it was a category D warranty and it had had a new warrant of fitness issued so there was nothing further he could do.

The licensee in defence produced a letter from his service manager which said that he had checked the 1976 Mazda station wagon 929 and on 27 October 1988 had issued a new warrant of fitness. He also said -

"In my opinion the vehicle is in a roadworthy condition".

A category D vehicle has implied in its terms of sale by virtue of section 93 of the Motor Vehicle Dealers Act 1975 subsection (2):

"(2) Where, after the commencement of this section, any licensee sells a category D motor vehicle to any person who does not by reason of the sale become the trade owner of the vehicle there shall be implied in the contract of sale a term... that the licensee warrants -

- (a) That the motor vehicle has a current warrant of fitness properly issued under the Transport Act 1962; and
- (b) That the motor vehicle is of merchantable quality and is fit for the purpose for which vehicles of that type are usually used."

It is to be noted that there are two requirements in respect of a category D motor vehicle.

The Tribunal has had the advantage of being able to view the exhaust system and it was patchwelded in many places. There was also evidence of firegum being used in other places to stop leaks.

The severely corroded exhaust system had been temporarily repaired. The purchaser also gave evidence of the fact that the exhaust system was held up by wire rather than the proper brackets. The Tribunal having seen the exhaust system finds it difficult to believe that that exhaust system was actually inspected at the time the warrant was issued. If it had been inspected by a competent person, the Tribunal cannot imagine that they would have issued a warrant of fitness. The Tribunal therefore finds that the warrant of fitness in this instance was not properly issued.

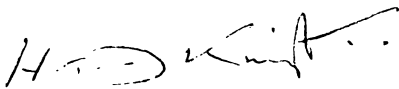
In any event, the licensee also had to ensure that vehicle was of merchantable quality and fit for its purpose. In the Tribunal's view because of the condition of that exhaust system, this vehicle was certainly not fit for the purpose for which vehicles of that type are usually used, namely on the road. The exhaust was in such a condition that it was likely that fumes would start escaping from its structure and would have been released into the vehicle. In any event, the exhaust did in fact fail within the first week.

The licensee at the hearing conceded that the vehicle with that exhaust system on it in that condition would not have been of

merchantable quality considering that it had failed within the week.

The licensee was offered the opportunity by the purchaser to compensate him or have the vehicle repaired. In circumstances, the purchaser obviously had to have the vehicle repaired before he could continue to use it. There has been a clear breach of the category D warranty provisions and the Tribunal orders that the licensee should pay to the purchaser by way of compensation the sum of \$250.

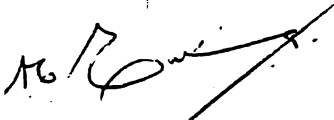
DATED at AUCKLAND this *17th* day of *March* 1989



H.T.D. Knight
Chairman



R.G. Lewis
Member



A.E. Enting
Member