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Decision No. AK 69/89

22 AUG 1989

25 AUG 1988

Reference No. MVD 151/89

LIBRARY

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 MOTOR VEHICLE DISPUTES TRIBUNAL

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

HEARING at HAMILTON on 21 July 1989

APPEARANCES

[REDACTED] in person  
[REDACTED] for dealer

DECISION

This dispute arose out of the sale and purchase of a 1970 Chrysler Valiant motorcar. It was a Category D motor vehicle for the purposes of the Act. At the time of purchase a pre-purchase inspection report was obtained from the AA. It is dated 28 April 1989 and it had a summary of defects listed on the front of it. The vehicle was described as being serviceable in keeping with the age and mileage shown but requiring attention to the faults noted. The purchaser had several matters attended to by the licensee as a part of the agreement to purchase the motor vehicle.

The purchaser's complaint was that these matters were not properly attended to and he had taken the vehicle back on other

occasions for repair. At the hearing, his complaint was that the work had not been properly carried out by the garage to whom the licensee had contracted the repair.

The parties had several complaints and matters which had been dealt with. However at the time of the hearing there were two invoices still in dispute.

The first was the [REDACTED] invoice 30028 for an amount of \$346.20 for repair to the tie rod ends, the ball joints and for a wheel alignment this work being carried out on the 24th May 1989. The purchaser produced the AA report which included in the summary of vehicle defects that is the work that was to be done, play in the front suspension ball joints top RH and lower LH. There was also a note that there was some play in the steering tie rod ends.

The purchaser also produced a report from [REDACTED] and it stated "This car (described it) has been checked by our mechanic and the following items have to be replaced.

- Tie Rod ends
- Steering Box
- Steering Idler
- Lower Ball Joint

The car has now been brought up to current warrant of fitness standard. Without this work carried out on the vehicle it would be a potential hazard on the road."

Unfortunately the purchaser was unable to have available for the Tribunal the actual parts that had been replaced.

The licensee produced a report from the AA dated 20 July 1989 in which the officer from the AA confirmed the inspection on 28 April 1989 a full copy of that report being on the file and then went on to say that a few days later the vehicle was returned to him for a re-check that he re-checked it and his second inspection revealed that there was no play in the ball joints and no excess free play in the steering box.

From the Tribunal's point of view both those reports would seem to cancel each other out. The purchaser gave evidence of some other verbal statements being made by the AA officer, however for the purposes of this hearing the Tribunal accepts the written statements rather than the oral hearsay statements.

The purchaser was questioned carefully by the Tribunal to ascertain what difficulties there were with the steering and the handling of the vehicle between the date of the issue of the warrant of fitness which was the 4 May 1989 (which had been obtained by the licensee) and the date of the repair that was carried out on 25 May 1989. The purchaser was questioned about the braking of the vehicle and whether or not there was any shimmying of the steering wheel present. The purchaser's evidence did not give any indication of these problems being present. The purchaser's evidence did not disclose any problem

relating to the braking of the vehicle i.e. there was no question of the braking affecting the steering or when the brakes were applied nor was there any movement to either one side or the other. Apparently according to the purchaser it braked in a reasonably straight fashion.

The Tribunal is aware as the licensee pointed out that these vehicles do have some play in the ball joints greater than what might be found in other vehicles. Had the parts been available for the Tribunal to inspect it may well have been able to resolve the conflict between the reports. However they are not available so that exercise cannot be carried out by the Tribunal.

There is insufficient evidence from the purchaser as to the vehicle's performance which would justify the Tribunal arriving at the conclusion that the first repair had not been properly carried out. In these circumstances the Tribunal does not consider that it is able to hold the licensee responsible for the amount claimed of \$346.20.

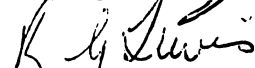
Moving to the second amount namely \$116.16 the licensee's evidence was that the purchaser was complaining about the repair that had been carried out by the garage. The licensee was unable to arrange for the vehicle to go in immediately but had to book it in and he was prepared to do this and the garage who carried out the initial repair work was prepared to look at the question of the engine mounts and the gear box seal. However before that could be done the purchaser had the vehicle repaired elsewhere. In these circumstances having regard to the provisions of the Act that require the licensee to be offered the opportunity of repair the Tribunal considers it would be inappropriate to make an order against the licensee for those repairs.


The evidence from the AA shows that an oil leak was still present however it is described as moderate and the purchaser's evidence was that he has not had to replenish the oil so the severity of that leak cannot really be established by the Tribunal. In any event it would have had to decline the purchaser's claim on the basis of the evidence that the licensee would have had it repaired and was prepared to have it repaired but the purchaser went off elsewhere on his own volition and had it repaired.

Taking into account the evidence of the AA that one engine mount had in fact been replaced the evidence of the purchaser as to the performance of the vehicle is insufficient in any event to show that because of that problem the vehicle was not of merchantable quality as at the date of purchase. In these circumstances the Tribunal dismisses the purchaser's complaint.

DATED at AUCKLAND this 7<sup>th</sup> day of August 1989

  
H T D Knight  
Chairman

  
R G Lewis  
Member

  
A E Enting  
Member