

Decision No. AK93/89

30 MAR 1990

Reference No. MVD 181/89

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 AUCKLAND MOTOR VEHICLE DISPUTES TRIBUNAL

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

HEARING at AUCKLAND on the 8th day of September 1989

APPEARANCES

[REDACTED] in person
[REDACTED] dealer

DECISION

This dispute arose out of the sale and purchase of a 1979 Austin Allegro motorcar for \$4,000, though apparently a sum of \$4,400 could have been paid inclusive of a warranty. The vehicle was a category D motor vehicle.

The actual agreement for sale and purchase was signed up on 8 December 1988 but the window notice was completed on 10 December 1988 being apparently the day of delivery of the vehicle. The vehicle was driven from Auckland to Putaruru by the parents of [REDACTED] who had apparently obtained the car on her behalf. They complained of problems with the brake and clutch on the delivery trip.

They apparently called [REDACTED] who agreed to repair the clutch and brakes in Auckland. It was then found almost immediately after purchase, within a day or two, that there was difficulty having the car started. The vehicle was taken to a local garage for that problem. It was then found that the water pump was leaking and that it was in such a condition that it would not have been safe to have returned to Auckland with it.

This information was passed on to [REDACTED] who, according to the purchaser, authorised the necessary repairs to be carried out so that the vehicle could be brought to Auckland for the clutch and brake repairs.

The purchaser produced two invoices, one dated 22 December 1988 from [REDACTED], a mechanic in Tokoroa, for the repairs to the water pump totalling \$228.30. The purchaser pointed out that that was not the actual date the repair was carried out, but was strictly just the date of the invoice.

The vehicle was taken to Auckland and apparently the hard starting problems continued. The vehicle went back to Putaruru. There was no improvement in the starting problems and then, the purchaser stated, she again contacted [REDACTED], and was authorised to have the necessary repairs carried out. She did this, and there was an invoice produced from [REDACTED] Tokoroa for \$198.30. Although that invoice was the same day as the other invoice, the purchaser's evidence was clear that one repair was carried out before the trip to Auckland for the clutch and brakes repair and the other one afterwards. So presumably, 22 December would be the correct date for the [REDACTED] repair.

The vehicle was a category D vehicle but it does appear clear from the evidence of the purchaser that these problems were suffered almost immediately after purchase. In these circumstances, the Tribunal finds that the vehicle was not of merchantable quality at the date of sale because of those problems in addition to the clutch and brake problems to which the licensee has already attended.

[REDACTED], who appeared at the hearing, indicated that the company was in receivership with the official assignee acting as receiver. He stated that he did not have any argument with the matters put forward by the purchaser. He explained however that at that particular time, the company was having financial difficulties and this caused his absence from the business to deal with those other matters. Therefore, both he and the Tribunal would accept that the purchasers may have had difficulty after that date in having their problems attended to by the company.

The Tribunal expresses its appreciation to [REDACTED] for attending the hearing. There will however be an order that the licensee should pay to the purchaser by way of compensation the

sum of \$426.60 being the total of the two accounts. The purchaser should take this decision to the official assignee. If payment is not made by the official assignee, then urgency should be given to making an application on the Fidelity Fund because the Tribunal in any event, in accordance with the provisions of Part III of the Act, sections 39 and 40, finds that the purchaser has suffered a loss because of the breach of the category D implied term to an amount of \$426.60.

DATED at AUCKLAND this *22nd* day of *September* 1989



H T D Knight
Chairman



R G Lewis
Member



A E Enting
Member