

15 FEB 1990

LIBRARY

27 FEB 1990

Decision No. AK108/89

Reference No. MVD 223/89

IN THE MATTER of the Motor Vehicle
= Dealers Act 1975

ANDIN THE MATTER of a disputeBETWEEN

[REDACTED]

PurchaserAND

[REDACTED]

DealerBEFORE THE AUCKLAND MOTOR VEHICLE DISPUTES TRIBUNAL

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

HEARING at AUCKLAND on 2 November 1989APPEARANCES

[REDACTED] in person
[REDACTED] for dealer

DECISION

This dispute arises out of the sale of a 1978 Honda Civic motorcar on 19 June 1987. The odometer at the time of complaint read 97,335 kms. The purchaser's complaint was that the vehicle was sold to him as a two-owner vehicle, and it was described as such on the window notice, when in fact it should have shown four previous owners.

There was no dispute in respect of those facts. The only question for the Tribunal to decide was the difference in value so as to award an appropriate amount of compensation.

Section 101 of the Motor Vehicle Dealers Act 1975 authorises the Tribunal, where it is satisfied that the vehicle is substantially different from the vehicle as represented in the notice attached to it in purported compliance with section 90 of this Act, to award compensation. Section 101(1)(b) provides that:

"Where, having regard to all the circumstances of the case, it considers that such an order for rescission would be unwarranted or unjust, order the licensee to pay to the purchaser, or any other person claiming through the purchaser, such sum (not exceeding \$3,000) as the Tribunal thinks just by way of compensation in respect of the difference in value between the vehicle as represented in the said notice and the vehicle as sold by the licensee, -

and, in either such case, the Tribunal may make such further or consequential order as it thinks fit."

The Tribunal is able to appreciate why it should be given power to make consequential orders in respect of applications for rescission because there are many other matters that have to be attended to, such as the question of compensating for any damage that may have occurred to the vehicle, the question of ordering that consideration be returned, and the question of the rights and obligations of the purchaser under any collateral financing agreement.

The Tribunal is not so readily able to ascertain why, when it is making an order for compensation, it needs additional powers to make consequential orders unless that should relate to the method of payment.

It is to be noted that the provision at the end of section 101(1)(b) is that the Tribunal may make such further or consequential order as it thinks fit.

The Tribunal does not interpret that as being able to make an order in respect of consequential damages so as to extend the extent of the compensation that it is able to order under section 101(1)(b), which is complete in itself prior to the proviso added at the end of the section. The Tribunal takes the view that the statutory power given to it is merely to make an order by way of compensation in respect of the difference in value between the vehicle as represented in the said notice and the vehicle as sold by the licensee.

Therefore the Tribunal, being of the view that it is limited in the jurisdiction given to it under the Motor Vehicle Dealers Act to consider the question of compensation in respect of the difference in value between the vehicle as represented and the vehicle as sold, turns its attention to that matter and the evidence before it.

Perhaps before it does so, it ought to comment that the purchaser produced a lengthy brief of evidence which dealt with

several issues including a request that "the Institute" (which presumably is referring to the Tribunal who are of course quite independent of the Institute) make an order for payment against the licensee which shows its disapproval of such misleading, I believe deliberately misleading conduct."

The Tribunal, as it reads its powers under the Act, is not able to punish the licensee but only to consider the difference in value between the vehicle as described and the vehicle as sold.

There was also a request for compensation on the extra interest and insurance of the purchaser would have paid on a more expensive car. However, because of the limitations of the Act as the Tribunal reads it, the Tribunal considers it is not able to make such an order or take such a factor into account. If it was able to do so, then presumably it should also order loss of interest which could have been earned on compensation to those purchasers who have paid cash.

The purchaser, for reasons given to the Tribunal, was unable to obtain any valuations. The licensee produced various vehicle offer and sale agreement forms from various sales that he had made around about the same time as the purchaser's vehicle was sold.

However, although the Chairman started to examine these documents, it became apparent that what he was really being asked to do was for the Tribunal to do its valuation on those documents. It would have had no idea of the conditions relating to the individual sales or the condition of the actual vehicles being sold which may have affected the price.

What the Tribunal is asked to do is to take the difference in value between this particular 1978 Honda Civic in its condition as sold, at the mileage at which it was sold, on the one hand having four previous owners and on the other having two owners.

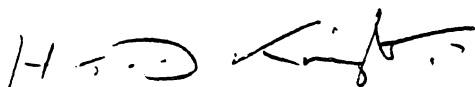
The purchaser had claimed through his solicitor the sum of \$2,500, although at the hearing he indicated that he was unable to produce any evidence, it being a matter for the Tribunal to fix the appropriate compensation. The licensee's evidence was that there was no difference in value. He stated that he was a person who had dealt in low-value cars and that they all sold on their condition.

Be that as it may, the Tribunal is still dealing with a vehicle in the same condition but a difference just in the number of owners.

When pressed as to that situation, the licensee indicated that the two-owner vehicle would be more appealing to the public although not to a person who was versed in the trade. He indicated that any difference in value would have to be in the hundreds not the thousands.

Although he did not give the Tribunal any figure, the Tribunal would agree generally with his evidence. However because the Act is there to protect the purchasers and we are dealing with the matter from the purchaser's perspective, the Tribunal considers that there would be a difference in value and using the experience of its members which amounts to several decades in the industry and its own experience as a tribunal hearing these cases for over a decade, it fixes the amount of compensation payable as \$200. There is therefore an order that the licensee should pay \$200 to the purchaser by way of compensation.

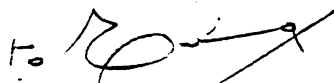
DATED at AUCKLAND this *14th* day of November 1989



H T D Knight
Chairman



R G Lewis
Member



A E Enting
Member