Decision No: Ch /6/92
M.V.D. No: 237/91

IN THE MATTER of the Motor Vehicle Dealers Act 1975

AND

IN THE MATTER of a dispute

BETWEEN [redacted]. AND [redacted]. [redacted]

Purchasers

AND [redacted]

Dealer

BEFORE THE CHRISTCHURCH MOTOR VEHICLE DISPUTES TRIBUNAL

Mr J.G. Matthews - Chairman
Mr H.G. Hunt
Mr A.T.F. Beere

HEARING at CHRISTCHURCH on the 6th day of December 1991

No appearance by the purchasers
No appearance by the dealer

DECISION

Mr and Mrs [redacted] purchased a Mazda 323 from the dealer on 19th June 1989. In mid-1991 the car failed a warrant of fitness on the basis that the front seat belts were not of New Zealand standard.

The dealer is out of business and the purchasers live in Invercargill. Accordingly there were no appearances before the Tribunal. The purchasers sought compensation in the sum of $373.50 for installation of complying front seat belts.

This was a category D motor vehicle in terms of the classifications of vehicles set out in the Motor Vehicle Dealers Act 1975, because it was a vehicle imported in used condition from Japan. Accordingly, section 93 of the Act implied into the contract of sale two terms, namely that the vehicle should have a warrant of fitness properly issued under the Transport Act, at the time of sale, and that the vehicle should be of merchantable quality at the time of sale and reasonably fit for the purpose for which vehicles of its type are usually used.

Ordinarily it is necessary for any complaint alleging a breach of either of these terms to be brought within six months of the date of purchase of the vehicle. There is provision in the Act for us to extend time where it is just and reasonable that we should do so in all the circumstances of the case, taking into account the interests of both parties.

This is not a situation where a problem has arisen with a vehicle well outside the six month period. Rather, for reasons which we will shortly outline, the problem with this vehicle existed at the time of sale but was not identified until well outside that period. In all the circumstances of this case we have little difficulty in finding that it is just and reasonable that time should be extended and the complaint should be considered.

In August 1990 the dealer wrote to Mrs [redacted] pointing out that the belts in her vehicle should in fact have passed the warrant of fitness. However, it appears that the views in that letter then held by the dealer were wrong because in point of fact the Ministry of Transport clearly now refuses to warrant the vehicle with the present belts.

When the importation of Japanese vehicles commenced, the law in New Zealand required that all vehicles be fitted with seat belts in the front which complied with New Zealand safety standards. It was not known initially whether vehicles being imported from Japan did or did not comply with those standards and there was a good deal of confusion and difficulties for purchasers, and indeed dealers, in obtaining warrants of fitness at the outset, and for a considerable period thereafter. Eventually, however, it was possible for the Ministry to test most, if not all, of the various types of belts fitted to these vehicles and to classify those which came up to New Zealand standards and those which did not. As may be expected that process took some time and during that period, rather than decline to issue warrants for such vehicles, those warrants were in fact issued. Now that classification has reached an advanced stage, those vehicles which have belts which do not fit the necessary criteria are now being turned down for warrants of fitness. That is the case with this vehicle. Effectively, this vehicle has never had a warrant of fitness which has been properly issued under the Transport Act, but has received warrants in the meantime due to various factors which have applied, including the fact that for a lengthy period complying belts were in extremely short supply due to the substantial unexpected demand.

There have been a good number of cases of this type before this and other Tribunals in New Zealand in the last few months in particular. We are quite satisfied that it is appropriate that compensation should be awarded to the purchasers of this vehicle for a breach of the implied terms to which we have referred, such compensation being awarded under section 102A(b). That paragraph gives the Tribunal power to award compensation in such sum as it thinks fit.

We have considered the account produced by the purchasers in support of their claim. As we have said, we have dealt with a number of these cases within recent weeks, and in all cases the sum claimed has been considerably below the amount claimed in this case. Without the benefit of any explanation for this we are of the view that the sum charged to the purchasers is well outside the amount which could reasonably have been expected to be charged and we do not think it is fair to the dealer that he should bear this additional cost. Taking into account all factors we award to the purchasers compensation in the sum of $250.

As the dealer is now out of business the attention of the purchasers is drawn to the need for them to approach the dealer for payment and if that is unsuccessful, to consider making a claim against the Fidelity Guarantee Fund of the Motor Vehicle Dealers Institute, which is governed by sections 39 and 40 of the Motor Vehicle Dealers Act. In particular the attention of the purchasers is drawn to the need to bring any claim for payment from the fund within three months of the date of this decision.

DATED at CHRISTCHURCH this 30 day of JANUARY 1992.

J.G. Matthews

H.G. Hunt

A.T.F. Beere