Decision No. Ak 25/92 11 JUN 1992

Reference No. MVD 491/91

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 - Member
A E Enting - Member

HEARING at AUCKLAND on the 21st day of February 1992

APPEARANCES

For purchaser: [redacted] (on own behalf);

For dealer: [redacted]

DECISION

This dispute arose out of the sale and purchase of a 1987 Ford Fairmont motor car. It was incorrectly described on the statutory window notice attached to the vehicle as a Category A vehicle. The matter was discussed with the licensee and he agreed that it should be dealt with as a Category D.

The purchaser's complaint was that as at the date of sale, the warrant of fitness on the vehicle had not been purchased within 28 days as is required, and that the car was not up to warrant of fitness standard.

There seems to be little dispute on that matter because the licensee has produced an invoice dated 31 July 1991 (the sale took place on 9 July) for warrant of fitness work, including replacement of the steering drop arm and the wheel alignment, coming to a total of $220.27.

The purchaser claimed firstly for a tow bar at a cost of $300, which had been included in the purchase price. The licensee had, through another company, sent the purchaser a cheque for $300, so the Tribunal indicated that the purchaser should cash that cheque and did not take that issue any further.

In respect of the tyres, the purchaser produced a statement from a tyre service which stated that two of the tyres were "to the warrant limit" whilst the other two tyres were "below the warrant limit (one showing steel)"; so that as at the time of sale the vehicle required not only the warrant of fitness work, which the licensee carried out, but also the replacement of the two tyres in order to satisfactorily obtain a warrant.

The purchaser's evidence was that the tyres were worn because of the steering fault. This would be consistent with the work carried out by the licensee.

The licensee stated that the purchaser had not given him any notice of the fact that the car required the tyres. When he did learn of the problems with the fact that the warrant had not been issued within the necessary time, the licensee took the vehicle back and carried out the necessary work.

The licensee's evidence was that if he had received notice that the tyres required replacing, he could have done this at a cost of $25 - $30 each. However these were not new tyres; these were tyres which had been taken off wrecked cars in Japan.

It is accepted that the purchaser was asked why he had not taken the vehicle back to the licensee to have the tyres replaced. He replied that he panicked.

The Tribunal also notes that it is not essential that the purchaser give a written notice to the licensee and in respect of the Category D vehicle which this motor vehicle was, and it relies on the authority of the District Court decision of [redacted] 1990 [DCR 289].

The claim is for two tyres, not four tyres, and the retail price paid by the purchaser was $580. The Tribunal is of the opinion that a reasonable amount to allow for the wholesale price of tyres would be approximately $110 each. There will therefore be an order that the licensee should pay to the purchaser by way of compensation the sum of $220.00.

The Tribunal observes that the licensee is no longer in business. He paid for the tow bar from another company. It could be that this company no longer has funds. The purchaser is advised that he should claim immediately the amount of $220 from the licensee. If he does not get immediate satisfaction, then he should consider making a claim against the fidelity fund, and for that purpose the Tribunal would find that the purchaser indeed suffered a loss up to the sum of $220 within the meaning of sections 39 and 40 of the Motor Vehicle Dealers Act. There is a time limit on making such a claim, and the purchaser is advised that he should make all speed either to get payment, or alternatively to lodge the claim, if necessary with the assistance of the Motor Vehicle Dealers Institute.

DATED at AUCKLAND this 20th day of March 1992

H T D Knight
Chairman

R G Lewis
Member

A E Enting
Member

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