Decision No. Ak 57/92

Reference No. MVD 181/91

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 28th day of May 1992

APPEARANCES:

[redacted] for purchaser
for dealer

DECISION

This matter was heard further, it having initially been heard on 22 August 1991. At that time it appeared from the report from [redacted] that the vehicle had a problem related to the fuel. The report from [redacted] to the purchaser reads as follows:

> "Correct fuel is 98 Ron or higher unleaded. There is no suitable fuel in New Zealand for this vehicle. The nearest would be super which is 96 Ron leaded. This is based on the Ron requirement which in this case is more important than the lead aspect.

> Possible damage operating on the incorrect fuel is varied and can depend on operation. Generally running on too low an octane as would be the case with 91 Ron ULP can result in fuel knock (Detonation). The engine control system is equipped with a knock control device, however, the amount of knocking running on 91 Ron would be more severe than was ever anticipated. The result can be complete engine failure. Knocking causes abnormal combustion temperatures which can affect spark plugs, manifold and other engine components.
>
> On the other hand use of 96 Ron (Super) leaded fuel whilst the octane is closer to that required the lead in the fuel causes damage to emission control devices fitted to this vehicle, ie, 02 sensor and catalytic converter. It may also cause premature failure of MXA jet valves and piston rings."

The purchaser noted that the problem with the vehicle in that it was losing power and rough running within a few days of purchase. It was returned to the licensee and it was recorded on one of the licensee's invoices that the fault had appeared at the time that they tested it.

Incredible as it may seem the vehicle has been to various people advising both the purchaser and the licensee and it appears to have been returned to the licensee on approximately ten occasions. At no time was the licensee's mechanical staff able to either diagnosis, locate or rectify the problem.

The vehicle finally was taken to a repairer who actually did locate and rectify the problem and the vehicle has been tested by both parties and it is now agreed that it is running correctly.

The Tribunal is convinced on the evidence of the purchaser that the vehicle was performing incorrectly and had a serious problem almost from the day of purchase and therefore the vehicle was not of merchantible quality nor reasonably fit for its purpose. The various disaster trips that they had are recorded in the lengthy evidence that was put before the Tribunal, some of it in great detail, even logging of the particular trips.

The issue for the Tribunal at the further hearing of the matter was really the question of quantum. The purchaser claimed a total amount of two invoices, the first totalling $1,417.50 and the second $241.88 totalling $1,659.38.

A considerable portion of those invoices related to diagnostic time.

This time would at first glance appear to be excessive. However, taking into account that the licensee had had the vehicle for diagnosis on ten occasions, it would be appreciated

that considerable time would have to be spent by this person who had received the vehicle for the first time in endeavouring to diagnose the fault. We must also remember that Mitsubishi Motors had wrongly diagnosed the fault.

This repairer is able to speak from quite a high vantage point because he actually diagnosed, located and repaired the faults so that the vehicle is now running correctly. A situation acknowledged by the licensee who has had the vehicle for testing.

Against that background the Tribunal is considering an order under s.102A of the Act in respect of a category D motor vehicle for compensation. The Tribunal has taken into account the submissions as to quantum made by the licensee's expert witness. The Tribunal using the expertise available to it on the Tribunal and listening carefully to the submissions from both sides of this argument has concluded that a fair and reasonable amount for compensation in this matter would be $1,375.

The Tribunal therefore finds that the vehicle was not of merchantible quality, nor reasonably fit for its purpose as at the date of purchase on the basis of the very careful and detailed evidence presented by the purchaser. It finds that the fault was extremely difficult to diagnose and rectify and it orders that the licensee should pay to the purchaser the sum of $1,375 by way of compensation for the breach of the statutory provision contained in s.93 that the vehicle should be of merchantible quality and reasonable fit for its purpose.

DATED at AUCKLAND this 25th day of June 1992

H T D Knight
Chairman

R G Lewis
Member

A E Enting
Member

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