

BETWEEN

AF
APPLICANT

AND

ZU Ltd
FIRST RESPONDENT

AND

ZUZ Ltd
SECOND RESPONDENT

Date of Order:

8 May 2013

Referee:

Referee Tunnicliffe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim by AF, the applicants, for a refund of \$698.17 is dismissed. AF are to pay \$703.69 to ZUZ Ltd on or before 20 May 2013.

Facts

[1] During the hearing the correct respondent was identified as ZUZ Ltd

[2] In December 2012, a Toyota Surf belonging to the applicants broke down. ZUZ Ltd was requested to recover the vehicle and repair the fault. ZUZ Ltd diagnosed the fault as a leaking injector pump seal. The repair work and some other maintenance items were authorised. The applicants paid the account for the work, being \$1,401.86. The intermittent fault continued although the applicants did not advise ZUZ Ltd. The vehicle broke down again in February 2013 and ZUZ Ltd was asked to repair. The fault was diagnosed as being with the computer. The repair was authorised. ZUZ Ltd sent an invoice for \$703.69 for the second repair. The intermittent fault has now gone. The applicants consider they should only have to pay \$703.69 for the second repair which actually repaired the fault. Therefore they seek a refund of \$698.17. AA (manager of ZUZ Ltd) says there were two separate faults.

Issues

[3] The issues for the Tribunal to determine are whether there was one fault or two and whether ZUZ Ltd has failed to act with reasonable care and skill in diagnosis and repair.

Law and Decision

Was there one fault or two?

[4] AA said that a fuel problem is the usual place to start the diagnosis for the symptoms described because it is a common cause of those symptoms and is simpler to test for because it does not involve an auto electrician. AA's evidence is that he observed air in the fuel line during testing and that the air could only have entered the system through the injector seal. AA's evidence is that a leaking seal allowing air into the fuel will cause the symptoms described to him by the applicants. In the absence of any evidence to the contrary, I accept that evidence.

[5] AF points out that the symptoms associated with the fault continued after the injector seal had been replaced and therefore that was not the cause of the intermittent fault. The

symptoms disappeared once the computer fault had been repaired and therefore that must have been the cause of the symptoms.

[6] I find that it is more likely than not that there were two faults with the vehicle. I have accepted AA's evidence that there was a fuel fault. An auto electrician has discovered a fault with the computer and the symptoms have now disappeared, so it does appear that there was a second fault.

Has ZUZ Ltd failed to act with reasonable care and skill in respect of diagnosis and repair?

[7] ZUZ Ltd is required to carry out its work with reasonable care and skill (Consumer Guarantees Act).

[8] AF states that he wanted the fault he had described to AA fixed. If the leaking oil seal was not causing the fault, it did not need to be repaired at that time.

[9] The question is, should ZUZ Ltd reasonably have looked beyond the fuel fault on that first occasion and looked to see if there was electrical fault.

[10] Having discovered a fuel fault known to cause the symptoms described by AF, I do not think so. It seems to me the reasonable mechanic would assume the fuel fault to be the cause of the symptoms. It also seems to me that it would be unreasonable to look further at the customer's expense in that circumstance.

[11] It may well be that the fuel fault was not the cause of the symptoms, or not the sole cause. However, I find that ZUZ Ltd has acted with reasonable care and reasonable skill in looking for a fuel fault in the first instance and has acted with reasonable care and skill in fixing the fuel fault in the reasonable assumption that it was the cause of the symptoms described.

[12] I find the applicants liable to pay for both repairs.