



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 317

APPLICANT BE

RESPONDENT TD Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

[1] BE bought a [car] from TD Ltd, represented by Ms C. BE considers that it is defective, and claims a refund and/or compensation from TD Ltd.

[2] Both parties provided written submissions, in which they set out their respective positions. In summary, BE said that she had seen the car advertised on [online marketplace], and went to TD Ltd's premises on 24 February 2022. The car was a 2010 model, with an odometer reading of 43,264 kms. At that time, she was not permitted to drive and her father, who was with her, test drove the car. He had commented after doing so that there might be an issue with wheel alignment. As the car appeared to be suitable, BE's father bought the car for \$12,990.00, and TD Ltd agreed to do a wheel alignment. [BE's father] subsequently transferred the car to BE.

[3] The car was used very little until BE was permitted to drive again, which was on 16 June. In early July, she had observed a knocking noise when the car went over uneven surfaces. At this point, the car had done some 1,400 kms since she purchased it. She contacted TD Ltd, whose representative advised her to take the car to B Ltd, and get it checked. B Ltd found that there was play and knocking in the steering rack, and recommended that the rack be replaced. B Ltd replaced the rack with a secondhand one in August, and TD Ltd covered the cost involved.

[4] After this, the vehicle drove better, but there was still a knock present. BE continued to drive the car, her only form of transport, to work. In November 2022, when driving to [Town], she drove for the first time over a particularly bumpy road at 100 kph. The rack made excessive noise, and seemed to pull or shake the steering wheel. BE felt unsafe.

[5] BE had the car checked by C Ltd. A service report stated that there was "excessive play in the steering rack and would fail a WoF". She also obtained a further written opinion from C Ltd, dated 11 January 2023. The mechanic who examined the car, having checked it on flat ground and on a hoist, observed:

"... Minor play through the LH side there is a small amount of tightness as the steering passes through the centre point. With the car on the ground and steering loaded the operation is smooth and I am unable to feel the tightness through the steering wheel. From a WOF perspective I believe that there is a slight knock in the steering, but the EPS meets the requirements as described in the Virm section 9-1 point 5. Based on this I would pass a WOF

on the EPS with a note describing a knock in the steering as a warning for potential future wear. Consulted with 2 other WOF technicians who came to the same conclusion.

[6] BE considered at that point that the car was unwarrantable. She requested a refund from TD Ltd, which refused it. B Ltd disagreed with the C Ltd's report, and said that its technicians considered that the solution was to replace the steering rack with another secondhand one. An MTA representative confirmed that such a replacement was the appropriate course of action. Having had her request for a refund refused, BE consented to this being done. A replacement rack was fitted, and a wheel alignment was done by D Ltd, a [car make] dealer. BE said that this repair had seemed to make no difference, and the knocking continued.

[6] BE claimed that TD Ltd should provide and fit a new steering rack; or provide the funds for her to arrange that work to be done elsewhere; or a refund of the purchase price. She also said that she had suffered considerable delays, inconvenience and expense during this period because of the steering rack issue. She claimed the costs that she had incurred by making alterations to the car, as well as other expenses relating to loss of income, and attending the hearing itself. BE's main concern was based upon the C Ltd report dated 11 January 2023, in which it was stated that the knock was a "warning of potential future wear". BE provided a quote of \$4,773.70 for a new steering rack and fitting.

[7] Ms C said, in summary, that TD Ltd considered that the steering rack was satisfactory. Although it had provided two replacements, it had done so in order to keep a customer happy, rather than through a sense of obligation. The car had had a rigorous inspection when it was imported, and a warrant of fitness had been issued on 13 January 2022, the month before BE bought the car. A further warrant of fitness was issued on 24 February 2022. B Ltd, which had issued the warrant, had been obliged to follow the criteria set out in the VIRM, as defined and monitored by the NZTA. No concerns at that point were raised about the steering. A warrant of fitness had been issued a year later, on 7 March 2023.

[8] Ms C observed that some five months had passed before BE complained to TD Ltd about the knocking noise. TD Ltd had arranged for B Ltd to replace the steering rack with a secondhand one, as the car had been 12 years old at the date of its sale. When BE had contacted TD Ltd in November, after having driven on a rough road, TD Ltd had, at its expense, had another replacement rack put in the car. After that, on 7 March 2023, the car had obtained another warrant of fitness. On that date, the car had an odometer reading of 49,907 kms, which indicated that it had travelled 6,643 kms since the date of the sale.

[9] For TD Ltd, Ms C provided three letters. The first, from Mr S, the Service Manager of D Ltd reads:

We inspected the vehicle on 29/12/2022, and I confirm that the steering rack knocking noise when turning the steering wheel left and right while sitting stationary is due to the design of the steering rack. It is present in all models of this generation and it is not a concern. The performance of the Electronic Power Steering System is not affected. And it is not a reason for WOF rejection according to the NZTA VIRM.

A second statement, from Mr D of D Ltd stated:

Minor knock present on all electric steering [cars of this make] of this generation.

The third letter, from Mr F, the Service Manager of B Ltd, stated:

We have inspected the steering on the [car] as requested by TD Ltd. We found there was a knock coming from the steering when stationary and moving the steering wheel but during the road test felt ok.

As per instructed by TD Ltd we replaced the steering rack with a known good second hand unit, once fitted the vehicle was inspected again, there is still a very minor knock present but with this type of steering system on these models of [car make] it is quite normal and as stated in the NZTA Virm perfectly up to WOF standards.

These letters, said Ms C, taken with the letter from C Ltd cited above, indicated that five reputable mechanics were of the view that the knock was normal, minor, did not pose a safety risk, and would not prevent the car from obtaining a warrant of fitness and being driven safely and normally.

The issues

The question for me to decide is whether the knocking noise that BE has identified is a defect in the car that she bought and, if so, what remedy should be available to her.

The law

The purchase of the car was covered by the Consumer Guarantees Act 1993 (“the CGA”). Although the purchaser from TD Ltd was BE’s father, her evidence, which I accept, was that he purchased it on her behalf. Thus, BE is entitled to any claims that there might be against TD Ltd under the CGA.

The CGA provides guarantees that goods supplied by traders to consumers will be of acceptable quality and fit for their purpose. Whether goods are of “acceptable quality” or not requires consideration of the criteria set out in s 7 of the Act. The criteria, which include safety and durability, must be considered with regard to the nature of the goods, the price, and the other factors stated in the section.

Has the “acceptable quality” guarantee been breached?

In considering whether the car was of acceptable quality, I must consider the evidence that has been provided to me. BE has provided opinions from C Ltd that the “slight knock” is “a warning for potential future wear”. Against that, TD Ltd has provided evidence from D Ltd that a “minor knock is present on all electric steering [cars of this make] of this generation” and that “it is present in all models of this generation and is not a concern”. A B Ltd report states that there is a “very minor knock present but with this type of steering system on these models of [car make] is quite normal and as stated in the NZTA Virm perfectly up to WOF standards”. No report indicates the vehicle is defective or unsafe, or that the knock would prevent a warrant of fitness from being issued. The car has passed warrant of fitness checks since BE purchased it, the most recent one being on 7 March 2023.

On the basis of the evidence that I have, I do not think that BE has proved that the car was not of acceptable quality when she bought it. In my view, the preponderance of the evidence establishes that a slight knock is a normal feature of this model of car, and does not prevent its safety, its ability to be driven in a normal way, or its warrantable status. BE has driven it for several thousand kilometres, and continues to drive it. I do not think that the fact that there may be potential for future wear to be a ground for regarding the vehicle as not of acceptable quality. The car is a 2010 model, and the standard under the CGA is not perfection, but reasonableness. In these circumstances, I consider that TD Ltd has not breached any consumer guarantees, and that the car that BE purchased was such that a reasonable consumer would regard it as of acceptable quality.

Thus, BE’s claim is dismissed.

Referee: C Hawes

Date: 25 July 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.