



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 382

**APPLICANT**      **LS**

**RESPONDENT**    **BI**

**The Tribunal orders: BI is ordered to pay LS the sum of \$388.66. Payment of this sum is ordered no later than 29 September 2023.**

Reasons:

- 1) On 14 April 2023 the applicant bought a car from the respondent. This was via [online sales website]. The price paid was \$7,000.00. This was a 2007 vehicle which at the time of sale had travelled 164,000 kilometres.
- 2) The relative advertisement included the following: "Leather seats. Excellent condition. Good reliable car."
- 3) On 19 April, whilst the car was being driven by the applicant, an engine light came on and LS says "within moments there was a huge bang and the car was shaking." The problem was assessed as a spark plug 'missing,' which had been incorrectly fitted. The applicant arranged for a garage to redrill the spark plug. The garage also found the alternator needed replacing and attended to this. LS seeks reimbursement of the costs incurred in attending to these issues.
- 4) The respondent says the words "excellent condition" in her advertisement followed, and clearly were with reference to, the leather seats. It is contended that there was an absence of "due diligence" on the part of the applicant. A new battery had been installed just prior to the sale. BI states that she "wanted to provide the new owner with a good car and went to all lengths and cost to do so."
- 5) The relevant law is the Contract and Commercial Law Act 2017. The issues to be determined by the Tribunal are:
  - a) Was there a misrepresentation by the respondent?
  - b) If so, what remedy is the applicant entitled to?
- 6) This was the private sale of a second-hand good. The laws that provide for warranties, or guarantees, with respect to goods sold by businesses do not apply here.

- 7) In this case, the respondent would be liable only if there was a misrepresentation on her part. A misrepresentation is a false, or inaccurate, statement of fact made by one party to a contract which induces, or causes, the other party to enter into the contract. Where there is a misrepresentation, the party to whom it is made may be entitled to compensation.
- 8) I would agree with the respondent that the words in the advertisement, 'excellent condition' referred to the leather seats, rather than what might be characterised as a representation about the overall, including mechanical, state of the vehicle. However, and that said, I believe the respondent did, and intended, to convey an impression that the car was in sound working order. It was described in the advertisement as being 'reliable' and I consider that this would have been reinforced by the respondent at the meeting following which the applicant decided to buy the car. The car was stated in the advertisement as having a 'full service history' which would, at least, imply that that was recent, whilst, in fact, the last service was in 2019.
- 9) I, therefore, find that there was a misrepresentation. A car which is represented to be reliable, and in sound working order, does not break down and require to be towed some 4 days after the sale. I accept the applicant would not have bought the car-at any rate at the price paid-if she was aware it had issues, which needed the attention that turned out to be the case.
- 10) The applicant, accordingly, is entitled to compensation. However, the assessment of the compensation to be awarded should be reasonable, and proportionate. As a matter of common sense, it should take into account the fact that this was a 15 year old vehicle which had travelled 164,000 kilometres. With reference to the 'substantial merits and justice of the matter,' I have to also say that there is more than little substance to the respondent's point that there was an absence of 'due diligence' [contributory fault] on the part of the applicant in not doing anything to have a car of this vintage checked before deciding to buy it.
- 11) Taking into account all relevant factors, the applicant should be compensated for the immediate consequences of the breakdown of 19 April and getting the car back on the road. I award reimbursement of the [auto mechanic 1] invoice of 20 April, (for towage) \$115.00, and the [auto mechanic 2] invoice of 21 April ('machine and fit 1 x spark plug helicoil, run up engine and clear ECU of faults') \$273.66. This is a total of \$388.66.

**Referee: G.P.Rossiter**

**Date: 13 September 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>.