



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

**District Court**

**[2023] NZDT 141**

**APPLICANT** MN

**RESPONDENT** TG

**The Tribunal orders:**

TG is to pay MN the sum of \$865.18 within 14 days of the date of this order.

**Background**

1. MN purchased a car from TG in early 2023. The car was advertised on TradeMe with a \$1 reserve. The advertisement was relatively brief, and was accompanied by some photographs of the car and also a video of it. In addition, there was information provided through the question-and-answer function.
2. The issues to resolve the claim are:
  - a. What was said about the car at the time it was sold?
  - b. Did the car match this description?
  - c. If not, how much will it cost to resolve this?

**What was said about the car at the time it was sold?**

3. There were three representations that were at issue in this case. The first was a statement that the car “drives great.” The second was that there was “no panel damage.” The third was that the odometer reading was 130,000 km.
4. There was no dispute that these statements were made.

**Did the car match this description?**

*Car drives great*

5. The statement that a car “drives great” is more in the nature of an opinion, rather than a statement of fact, particularly in the context of this type of car, and given the statement was made by a private seller. Although it was clear that MN was unhappy with the clutch in the car, overall, the car appears to drive in a satisfactory manner. No express representation was made about the clutch and it was not established that the clutch was in a worse condition than would generally be expected of a car of this type and this age.

6. Therefore no remedy can be granted in relation to any mechanical aspect of the car.

*No panel damage*

7. There were two comments made about the exterior condition of the vehicle. It was stated that there were chips and marks, but it was specifically stated that there was no panel damage. There was also a third comment about the painting of the spoiler that is not in dispute. In addition to the comments about the exterior condition of the vehicle, there were also photographs and video available on the listing.
8. When MN received the vehicle he was unhappy with the exterior condition of the vehicle and he provided photographs which he explained showed paint texture issues, some scratching, and three dented areas. TG acknowledged that the minor dents would probably have been there when he had the car, however, he did not consider them to be a significant problem for a car of that age.
9. It was clear that TG felt he had fairly described the car when he mentioned it had chips and marks. He believed that this was sufficient notice of minor dents in the panels. MN acknowledge that he was quite particular about the condition of his cars but he says that the photographs and video showed an attractive, shiny car with no apparent dents.
10. Taking the advertisement as a whole, including having regard to the photographs and videos, the exterior of the car was portrayed to be in quite good condition, and it was not possible to identify any real issues with it. I do not consider that the disclosure of "marks" was sufficient to alert a prospective purchaser to the fact that there may have been dents in the paneling, particularly when there was also an express comment that there was "no panel damage".

*The odometer reads 130,000 km*

11. It was not in dispute that the odometer in fact read 138,000 km but the advertisement stated it was 130,000. It is accepted that there was no intention to mislead on TG's behalf, but nonetheless, the figure is incorrect.

**How much compensation should be awarded?**

12. MN has shown he is entitled to a remedy in relation to the panel damage and also because the odometer figure was incorrect.
13. He provided a repair cost of \$4,338.38 that appeared to return the body of the vehicle to a very good condition. This seems to relate to more than just the three dents. He also stated that he had carried out repairs to two minor areas which cost \$218.15, and he estimated that rear guard of the vehicle, which is an area that has larger dent would cost approximately \$1,000 to repair.
14. It is clear that MN has spent \$218.15 to repair some dents, and he is clearly entitled to be reimbursed for this.
15. It is difficult to ascertain from the photographs which were provided how significant a remaining dent in the rear guard is, but it is clear it is causing MN some unhappiness. This dent was not visible in the sale photographs or video. However, the car is an older one and there was disclosure that there were 'marks' on the exterior. It is therefore no possible to award all the costs claimed as this would have created betterment. I consider that compensation of \$500 is reasonable as a contribution to remaining issues with the exterior of the car.
16. In the context of a car which has travelled a long way, the error about the odometer is not as material as it could be in other circumstances, but equally it does mean the car has travelled further than MN was led to believe and he is entitled to some recognition for this. In the course of the hearing he described this as being a difference of approximately 10% of the service life on, for example, tyres.

Having regard to all the circumstances but lacking any specific valuation evidence to prove a material loss, I have awarded a nominal sum to reflect the error, of \$150.

### **Conclusion**

17. MN has shown that there were misrepresentations in relation to the exterior condition of the car and also as to the odometer reading, although it was accepted that neither was done intentionally by TG.
18. MN is entitled to receive the amount of \$865.18 from TG which should be paid on or before 7 July 2023

**Referee: S Simmonds DTR**

**Date: 30 June 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>.