



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 414

APPLICANT TD

RESPONDENT U Ltd

The Tribunal orders:

U Ltd is to pay \$22,257.95 to TD by 5 September 2023.

Reason

1. In September 2019, TD purchased a new motorhome from U Ltd for \$149,000.00. It is a [campervan brand], motorhome, registration [number]. Due to Covid restriction there was limited use of the vehicle. On or about 2 April 2022, TD was travelling on the [Road] and the vehicle would not engage gears. It had to be transported to F Ltd garage in [City]. That is a [campervan brand] agent. The vehicle had travelled about 29,600kms. After repairs were carried out the vehicle broke down again about 2,000kms later. The campervan was taken to [mechanic] where it was repaired.
2. TD believes that U Ltd is liable for the cost of the repairs under the Consumer Guarantees Act 1993 (CGA). She has claimed the cost of towing relating to the [City] breakdown \$1,146.75; the F Ltd repair cost of \$8,208.00 plus credit card surcharge \$164.16; Incidentals and roadside assistance during the [City] repair \$350.00; [car dealer] report \$517.50; [mechanic] repair actual cost \$12,221.54. U Ltd believes it is not responsible because the manufacturer's warranty had expired, U Ltd submitted that it was not given opportunity to view or repair the vehicle and the fault was due to the way the motorhome was driven and was wear and tear.
3. The issues to be considered are:
 - a. Was the fault caused by the use of the motorhome or by a defective part in the transmission?
 - b. Was the motorhome of acceptable quality?
 - c. Did TD lose her right to a claim under the Consumer Guarantees Act 1993?
 - d. What amount should be ordered?

Was the fault caused by the use of the motorhome or by a defective part in the transmission?

4. U Ltd has submitted that the vehicle failed because it was operated incorrectly by using the accelerator to brake on inclines or by having a foot on the brake when travelling. U Ltd provided no evidence in support of its position except for oral evidence at the hearing. Although the

damaged parts were available to U Ltd to examine and report on, U Ltd had not viewed the parts or commissioned a report.

5. After the first immobilization and repair of the vehicle TD contracted [car dealer] to examine the parts, talk to the repairer and find out what had happened. LQ reported that the reason that the vehicle was immobilized was because the clutch release bearing was leaking causing calibration issues. He found that there was excessive free play in the Dual Mass Flywheel. At the hearing he stated that the way the clutch system functions, it is not possible to use the accelerator as a brake on a slope because the clutch disengages around 2kph. He referred to parts that would normally be worn if it was possible to brake using the accelerator. Parts were showing normal wear and no sign of misuse.
6. Following the [City] repair the vehicle failed again. This time it was the Selespeed robot. [Campervan brand] agent, [mechanic] did the work. It was not replaced the first time the vehicle failed because it is a \$9,500.00 part and there was uncertainty about whether it needed replacing. The work involved in replacing the Selespeed robot was not a duplication of the [City] repair work that had already taken place.
7. I have considered the oral submissions from U Ltd at the hearing but the evidence from LQ was thorough and dealt with the facts following an investigation of the parts that had to be replaced. I am satisfied that I should rely on his expertise.

Was the vehicle of acceptable quality?

8. Sections 6 & 7 & of the CGA give a consumer the guarantee that goods will be of acceptable quality. This includes that goods will be 'durable', 'as a reasonable consumer fully acquainted with the state and condition of the goods,would regard as acceptable having regard to:
 - (f) the nature of the goods:
 - (g) the price (where relevant):
 - (h) any statements made about the goods on any packaging or label on the goods:
 - (ha) the nature of the supplier and the context in which the supplier supplies the goods:
 - (i) any representation made about the goods by the supplier or the manufacturer:
 - (j) all other relevant circumstances of the supply of the goods.'
9. I have considered the particular defect that occurred in the vehicle and find that on both occasions when it broke down the vehicle was not of acceptable quality. I have considered the age of the vehicle and the distance it had travelled. I am satisfied that a reasonable consumer would not expect to pay over \$22,000.00 of towing and repairs on a 2019, \$149,000.00 vehicle that had travelled 29,600kms.

Did TD lose her right to a claim under the Consumer Guarantees Act 1993?

10. U Ltd submitted that the company was not given opportunity to view or repair the vehicle.
11. When the vehicle first failed at [Road], TD phoned U Ltd. The receptionist put her through to a person in the Service Department. She was told that the vehicle was out of warranty. She was not offered any other assistance or asked to have the garage contact U Ltd once a diagnosis of the problem was made. U Ltd's submission was that TD should have challenged the decision that U Ltd would not pay for repairs because the motorhome was out of warranty. I disagree. Section 18(2)(a) of the CGA requires a consumer to give a supplier opportunity to remedy any failure within a reasonable time. I am satisfied that the contact TD made when the incident

occurred and before repairs were carried out was the opportunity U Ltd had to remedy the failure. It was then within TD's rights to take the vehicle to a repairer and obtain from U Ltd all reasonable costs in having the failure remedied and any consequential losses. (see s18(2)(b) CGA)

12. Throughout the problems TD experienced with her motorhome U Ltd has always denied liability. I have no doubt that if TD had challenged U Ltd at the time of the first repair, she would have had the same answer as U Ltd gave at the hearing, which was that she caused the problem, and the motorhome was of acceptable quality.

13. TD did not lose her right to claim from U Ltd under the CGA because she informed U Ltd of a problem and U Ltd did not accept it had liability for repairs.

What amount should be ordered?

14. I have ordered all the amounts claimed by TD except for the \$350.00 for incidentals. I accept a friend helped out however there is insufficient evidence to show there was a loss.

15. I have ordered the cost of the [car dealer] report. It was not a cost of proceedings. It was commissioned before the claim was lodged and was before the second repair at [mechanic]. It is a consequential loss that is recoverable under s.18(4) CGA. The amounts ordered for the [mechanic] are the actual amounts paid.

Summary

16. The evidence shows a premature failure of parts in the transmission of the motorhome. U Ltd had opportunity to be involved in the repair when notified of the breakdown of the vehicle but failed to become involved. TD is entitled to all the costs of repair and consequential losses arising from the vehicle not being durable. These are the merits and justice of the case.

Referee: BM Smallbone

Date: Monday 14 August 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>.