

**IN THE DISTRICT COURT
AT AUCKLAND**

**CIV-2017-004-002002
[2018] NZDC 2090**

BETWEEN

CLAIRE ALEXANDRA CATHRINE
JONES
Appellant

AND

2 CHEAP CARS LIMITED
Respondent

Hearing: 11 January 2018

Appearances: Appellant in Person
No appearance for the Respondent

Judgment: 8 February 2018

JUDGMENT OF JUDGE B A GIBSON

[1] On 11 August 2017 the Motor Vehicle Disputes Tribunal determined a complaint from the appellant in favour of the respondent in connection with an engine fault in a 2006 Nissan Murano motor vehicle purchased by the appellant from the respondent on 20 June 2015 for \$10,484. The engine in the vehicle developed a fault and had to be replaced. The respondent provided a second-hand engine at its expense and Ms Jones paid the labour costs of replacing the engine in the sum of \$873.72 and incurred in addition costs from her own mechanic of \$391. She sought to recover the two sums, \$1264 in total, from the respondent.

[2] The claim before the Tribunal was based on an allegation that the vehicle sold by the respondent to Ms Jones failed to comply with the acceptable quality guarantee in s 6 of the Consumer Guarantees Act 1993.

[3] An assessor, Mr S Gregory, found the engine damage was caused by the use of 91 octane fuel when the vehicle, having a 3.5 litre v6 petrol engine, required 95 octane fuel or higher. Based on the assessor's report and evidence that the engine had burnt

or blown pistons consistent with engine damage caused by the use of lower grade fuel, the Adjudicator was satisfied that the damage to the vehicle was most likely caused by Ms Jones, the appellant, using 91 octane fuel in the vehicle rather than any fault in the vehicle, and so the claim was dismissed.

[4] Schedule 1 of the Motor Vehicle Sales Act 2003 governs the procedure of Disputes Tribunals under the Act and s 16 of the Schedule provides that any party dissatisfied with the decision may appeal, within 10 working days, to a District Court Judge. Section 16(2) provides that if the claim does not exceed \$12,500 the appeal may be brought on the ground that the proceedings were conducted by the Disputes Tribunal in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.

[5] Ms Jones' point on appeal was that she obtained, on 14 August 2017, an extract from an owner's manual from a Nissan motor vehicle dealer at Takapuna which stated:

Use unleaded premium gasoline with an octane rating of at least 95 RON (Research Octane Number).

If unleaded premium gasoline is not available, unleaded regular gasoline with an octane rating of at least 91 (RON) may be used at slightly reduced performance. However, for maximum vehicle performance and the best driveability, the use of unleaded premium gasoline is recommended.

[6] There was also an instruction in the extract advising the driver not to use leaded gasoline.

[7] It is unclear whether the one page extract supplied to Ms Jones is for the particular make and model of vehicle sold to her. However, in any event, the information was not before the Tribunal when it heard the dispute on 10 August 2017. The Tribunal found that Ms Jones inadvertently used the wrong fuel and in doing so caused significant damage to the vehicle's engine and relied on the report of the Tribunal's assessor, her own evidence that in the 18 months of her ownership she had only ever used 91 octane fuel, and on a report of a conversation with a mechanic subsequently working on the vehicle who considered the vehicle had burnt or blown pistons. Mr Gregory's opinion was that was consistent with damage caused by use of the wrong octane fuel.

[8] With the evidence before it, it is difficult to see how the Adjudicator could have arrived at any decision other than the one he reached. Given the sole ground for appeal is one limited to the proceedings being conducted by the Tribunal in a manner unfair to the appellant which prejudicially affected the result of the proceedings, the ground cannot be made out on the evidence and the material the Tribunal had before it at the date of hearing. The information subsequently obtained by Ms Jones confirms the need to use premium gasoline with an octane rating of at least 95 RON and while suggesting that 91 octane gasoline may be used if 95 octane is not available, does not suggest 91 octane fuel can be used as a complete replacement for 95 octane fuel at all times when the vehicle is driven.

[9] Accordingly the appellant cannot establish the required grounds under s 16(3) of the first schedule of the Motor Vehicle Sales Act 2003 and there is no reason to disturb the Tribunal's decision.

[10] The appeal is dismissed.

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B A Gibson, DCJ