IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2018-004-000356
[2019] NZDC 5217

BETWEEN	NC MOTOR WORKSHOP LIMITED T/A NC MOTORS Appellant
AND	STEPHANIE LAURA BRUNNER Respondent

Hearing: 20 March 2019

Appearances: Appellant appears in Person
Respondent appears in Person

Judgment: 20 March 2019

ORAL JUDGMENT OF JUDGE G M HARRISON

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[1] This is an appeal from a decision of the Motor Vehicle Disputes Tribunal of 22 February 2018. The circumstances before the Tribunal were that in June 2016, the respondent, Ms Stephanie Brunner, purchased a 2011 Hyundai iX35 motor vehicle from the appellant, NC Motors Limited, for $14,385. After driving the vehicle for approximately three months, the vehicle developed a fault with its clutch. Ms Brunner took the vehicle back to NC Motors but its personnel declined to repair that because of a warranty in the sale and purchase agreement that any repairs had to be undertaken within a period of three months.

[2] The Tribunal had regard to the provisions of the Consumer Guarantees Act 1993, the appellant being a supplier of consumer goods. It referred to the definition of acceptable quality within that Act and after receiving advice from the expert sitting with the Tribunal, the Tribunal determined that the clutch fault breached the acceptable quality guarantee imposed on the appellant by s 6 of the Act. The Tribunal held that a

reasonable consumer would not expect a vehicle of this price, age and mileage to develop a fault with its clutch within three months of purchase that cost more than $1000 to repair. It held that the vehicle had not been as durable as a reasonable consumer would find acceptable.

[3] That being the case, the warranty provided in the agreement for sale and purchase did not apply because the damage to the clutch was of such a serious nature that the guarantee imposed by the Act had to be honoured. That was explained in the course of the hearing and I understood Mr Chea appearing for the company accepted that the company has the obligation now to pay the repair cost incurred by Ms Brunner. A second aspect of the Tribunal's decision was that the company was in breach of its obligations under the Fair Trading Act 1986 to advise Ms Brunner that the vehicle had been imported from Australia having been written off as not economically repairable in that country after an accident. Ms Brunner had asked if the vehicle had previously been damaged and apparently was assured that it had not been when in fact, that was not the case.

[4] The Tribunal therefore awarded damages of $3000 for breach of that obligation as an assessed loss of value of the vehicle as a result of the failure to make that disclosure. The Tribunal was of the view that if that disclosure had been made, Ms Brunner would not have paid the amount she did for the vehicle, however, Mr Chea for the defendant company did not raise any submissions on that aspect of the Tribunal's decision and as a consequence, even assessing the matter on the facts as found by the Tribunal and its application of the law, the appeal must necessarily be dismissed.

[5] There is further ground, however, on which the appeal would have to be dismissed. That arises from cl 16 of the first schedule of the Motor Vehicle Sales Act 2003 which deals with appeals to this Court from decisions of the Motor Vehicle Disputes Tribunal. It provides in cl 16(3):

> If the amount of 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.

[6] Those words are exactly the same as the words contained in s 50 Disputes Tribunal Act 1988. A similar ground of appeal is provided by that section to this Court in respect of decisions of the Disputes Tribunal. It is now trite law that there can be no appeal on either questions of fact or law where the right of appeal is limited to the manner in which the hearing was conducted and whether or not that was unfair to the appellant. Essentially, that means that the hearing before the Tribunal must be conducted according to the principles of natural justice which are essentially that the parties have a fair hearing and that the adjudicator making the decision should not be biased in favour of one party.

[7] In this case, neither of those issues are raised as grounds of appeal and that being the case, I would not have had jurisdiction in any event to differ with the findings of the Tribunal either on its interpretation of the law or its findings of fact. For that reason also, I have no option but to dismiss the appeal.

[8] Mr Chea advises that the amount awarded by the Tribunal has not been paid but that it can be paid promptly and Ms Brunner is to let him have her bank account details at the conclusion of this hearing. She pointed out that she was unaware that this appeal had been brought. After payment of the amount awarded by the Tribunal had not been made, she applied for an order of enforcement and incurred a filing fee in that regard of $200.

[9] That seems to me to be an entirely appropriate action to have taken particularly where she was unaware of the appeal and I therefore award her costs in this appeal of $200 to reimburse her for that expense.

[10] I note that at an earlier directions hearing, Judge Cunningham directed the appellant to pay security for costs in the sum of $387.50 on or before 5 October 2018. There is no immediate evidence on the file that that payment has been made and whether or not that is so, the order for payment of costs needs to be honoured in any event.

[11] If that amount has been paid, the registrar can release those funds to Ms Brunner and the company should pay the balance then owing. If that amount has not been paid then the award of the Tribunal must be paid plus the filing fee of $200 as I have indicated.

G M Harrison
District Court Judge