

**IN THE DISTRICT COURT  
AT MANUKAU**

**I TE KŌTI-Ā-ROHE  
KI MANUKAU**

**CIV-2020-092-002414  
[2021] NZDC 1397**

BETWEEN	AZN MOTORS LIMITED Plaintiff
AND	SCOTT MITCHELL Defendant

Hearing: 27 January 2021

Appearances: No appearance by or for the Plaintiff  
Respondent appears in Person

Judgment: 27 January 2021

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**ORAL JUDGMENT OF JUDGE G M HARRISON**

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[1] This is an appeal by AZN Motors Limited. Although, it is referred to throughout the papers also as ANZ Motors, trading at Great Motors Botany. The appeal is against a decision of the Motor Vehicle Disputes Tribunal of 20 July 2020.

[2] In brief, Mr Mitchell purchased a Volkswagen Golf motor vehicle from that company for \$11,432. He drove it for some months and problems began to emerge. He ultimately had it assessed at Continental Cars, who produced a fairly dramatic report indicating that there were major faults with the engine of the vehicle. There were multiple bolts that were different and not genuine Volkswagen parts. It seemed that the engine had previously been re-built and a new base engine was required to rectify the significant problems.

[3] The Tribunal assessed the requirements of the Consumers Guarantees Act 1993 and, in particular, whether the failure was of a substantial character, which the Tribunal accepted had occurred, which then entitled Mr Mitchell to reject the vehicle.

[4] I can ascertain no error in the reasoning of the Tribunal and on that basis alone, the appeal should be dismissed.

[5] There is a further relevant factor however and that is that for appeals against decisions of the Motor Vehicle Disputes Tribunal, the appeal procedure is governed by the first schedule to that Act. Clause 16(3) of the first schedule provides that:<sup>1</sup>

If the amount of the claim does not exceed \$12,500, the appeal may be brought on the grounds 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] This is word for word the same as the right of appeal from a decision of the Disputes Tribunal. It is clear that those phrases preclude any appeal to this Court on findings of fact or rulings of law by the Disputes Tribunal. The appeal to this Court can only be on the sole ground that the manner in which the proceedings were conducted by the Tribunal was unfair to the appellant and prejudicially affected the result of the proceedings. This clearly is limited to procedural unfairness and provided the Tribunal has acted within jurisdiction, there can be no effective appeal to this Court on the merits or indeed on any error of law.

[7] The notice of appeal does not raise any procedural irregularity as a ground of appeal. The concern of the appellant being essentially at the findings of the Tribunal in relation to its interpretation of the Consumer Guarantees Act, as I have already stated. However, I can discern no error on the part of the Tribunal. The failure of the engine to the vehicle was extensive and the vehicle should never have been sold to Mr Mitchell in that state. It may be that Great Motors Botany was unaware of these changes but as a motor vehicle dealer, it is responsible for the state of the vehicle at the time of the sale.

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<sup>1</sup> Motor Vehicle Sales Act 2003, sch 1 cl 16(3).

[8] For those reasons, the appeal is dismissed and the direction of the Disputes Tribunal must now be honoured.

G M Harrison  
District Court Judge