

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2021-004-000029
[2021] NZDC 7786**

BETWEEN

SIALE TALAKAI
Appellant

AND

EASY DRIVER LIMITED
Respondent

Hearing: 28 April 2021

Appearances: Mr Talakai in Person
Mr Atkins on behalf of Respondent

Judgment: 30 April 2021

DECISION OF JUDGE G M HARRISON

[1] This is an appeal from a decision of the Motor Vehicle Disputes Tribunal of 11 December 2020 whereby the Tribunal dismissed an application by the appellant, Mr Talakai.

[2] In August 2018 Mr Talakai purchased a 2005 Honda Civic for \$8400 and a 12-month mechanical breakdown insurance policy for \$890 from Easy Driver Limited (EDL). He financed his purchase with Instant Finance.

[3] Problems arose with the Honda but EDL declined to accept rejection of the vehicle. In November 2019 Mr Talakai contacted EDL again looking to trade in the Honda Civic and purchase another vehicle. He agreed to purchase a Mitsubishi Grandis which Easy Driver was selling for \$9995 with a \$1000 cashback. He negotiated a purchase price of \$8400 and undertook a new loan with Instant Finance to finance that purchase.

[4] Mr Talakai applied to the Tribunal seeking compensation from Easy Driver because:

- (a) the Honda Civic was not of acceptable quality;
- (b) Easy Driver engaged in misleading conduct regarding:
 - (i) the purchase of the Easy Driver warranty;
 - (ii) the existence of his rights under the Consumer Guarantees Act; and
 - (iii) the terms of the agreement to purchase the Mitsubishi Grandis and the related loan agreement with Instant Finance, which were different from what he expected.

[5] The Tribunal held that Mr Talakai was not entitled to reject the Honda Civic because he had disposed of it, albeit by selling it back to Easy Driver for \$8400 which was what he purchased it for. The Tribunal determined that Mr Talakai suffered no loss resulting from the purchase of the Mitsubishi Grandis that would have been recoverable under the Consumer Guarantees Act. It also determined that EDL was not in breach of the Fair Trading Act 1986.

[6] On appeal Mr Talakai complained that the Tribunal had not made a finding on part of his application which read as follows—

To resolve this dispute I am seeking \$7000 for the Honda issue plus \$3000 for the stress and time that I have had to endure.

[7] Appeals to this Court from decisions of the Motor Vehicle Disputes Tribunal are governed by clause 16 of Schedule 1 to the Motor Vehicle Sales Act 2003. The jurisdiction of the Disputes Tribunal is specified in s 89 of that Act. It provides—

- 1. A Disputes Tribunal has jurisdiction on the application of any party:
 - (a) to enquire into and determine any application or claim as the case may be under any of the following if that application or claim is in respect of the sale of any motor vehicle:

- (i) the Fair Trading Act 1986;
 - (ii) the Consumer Guarantees Act 1993;
 - (iii) subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017; and
- (b) make any order that a Court or a Disputes Tribunal constituted under the Disputes Tribunal Act 1988 may make under:
- ...
- (ii) in the case of proceedings under the Fair Trading Act 1986, s 43(2) of that Act; or
 - (iii) in the case of proceedings under the Consumer Guarantees Act 1993, ss 39 or 47 of that Act; or
 - (iv) in the case of proceedings under subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017, ss 43 to 48 or s 194 of that Act.

[8] Clause 16 in Schedule 1 provides that:

...

- (iii) 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.

[9] This is in exactly the same terms as appeals to this Court from the Disputes Tribunal pursuant to s 50 of the Disputes Tribunal Act 1988.

[10] Mr Talakai did not complain about the procedure adopted in the Tribunal nor the manner in which the proceedings were conducted. On that basis alone his appeal must be dismissed.

[11] His major concern was that the Tribunal had not dealt with his claim for distress damages of \$3000. Just before the hearing in the Tribunal he filed a document headed “applicant’s statement” in which he concluded by stating—

I have making an adjustment to what I have initially provide to this Court as to resolved this dispute, now seeking \$18,000.

[12] It is uncertain what that figure refers to although I understood that it referred to the distress damages. It seems that no formal application was made to amend the amount claimed in the original complaint.

[13] I doubt that the Tribunal has jurisdiction to consider a claim for distress damages. These generally flow from a tortious act or breach of contract. The law on the award of stress damages is reviewed in Borrows, Finn and Todd on “Law of Contract in New Zealand” 6th Edition at 21.2.3(f)(iv).

[14] The issue was considered by the Court of Appeal in *Mouat v Clark Boyce*.¹ The authors say—

What precisely *Mouat* holds is not entirely clear. But arguably it recognises that damages are recoverable where stress can be said to have been within the reasonable contemplation of the parties at the time of the contract, subject to an exception in the case of ordinary commercial contracts. Cooke P, recognised that the Courts had stopped short of giving stress damages for breach of ordinary commercial contracts. Stress was an ordinary incident of commercial law professional life. Ordinary commercial contracts were not intended to shelter the parties from anxiety.

[15] There are two bases therefore on which the Tribunal could not award stress damages. Quite apart from the limit on the grounds on which this appeal might be considered, the first is that stress damages are not available from a breach of a commercial contract, and secondly that Mr Talakai might suffer stress damages was by no means a reasonably foreseeable consequence of a breach by EDL of any provision of the contract of sale or of any statutory duty.

[16] For these reasons the appeal is dismissed.

G M Harrison
District Court Judge

¹ [1992] 2 NZLR 559.