

MALAYSIA
IN THE TRIBUNAL FOR CONSUMER CLAIMS
AT KUALA LUMPUR
CLAIM NO: TTPM-WP-(B)-205-2020

BETWEEN

NICHOLAS WONG ZEN ZHAD

... CLAIMANT

AND

CHAK YIT YOU

... RESPONDENT

GROUND OF DECISION

The Claimant claims for an amount of RM29,606.60 being the amount to repair the car, compensation for the loss of use of the car and compensation/damages due to the failure of the Respondent to deliver the car in its original conditions.

Claimant's Claim

1. Upon viewing and been satisfied with the condition, the Claimant had agreed to purchase a Porsche motor car, model Panamera 2 V6 Registration No. SK 8788, year of made 2012 in August 2019

from the Respondent for RM203,000.00. The Claimant paid a deposit of RM20,000.00 on 27.8.2019.

2. The sale was concluded and the car was delivered to the Claimant on 18.1.2020.
3. On the very day the car was delivered, the Claimant realised that the car was jerking and the engine was not stable, the coolant indicator was appearing and the front bonnet absorber was broken.
4. The Claimant had sent the car to a workshop. He left the car in the workshop for painting work first. On 24.1.2019, when the Claimant was taking the car from the workshop, he found the car temperature was going up. He immediately called Tone Motors, whose representative had gone with Claimant to inspect the car before the Claimant agreed to buy the car.
5. As it was Chinese New Year holidays, the car was left in the workshop for the whole duration before it could be repaired. On 3.2.2020, Tone Motors did a thorough check of the car, and according to Claimant, the workshop had informed him that the car was not in good condition and some of the car parts need to be changed.
6. The workshop had also informed the Claimant that the front left and right tyres were different, from which they have seen when they

inspected the car in August 2019. The Claimant had taken a photo of the left tyre during the inspection.

7. The Claimant suspects that the Respondent has changed some of the parts in the car. The Claimant had collected his car from Tone Motors after repair on 3.2.2020. The Claimant claims that the car is not roadworthy and there was a need for further repairs and some of the parts have to be changed.
8. The Claimant has submitted quotations from two different workshop i.e. Tone Motors and Exquisite Marques. The Claimant wants to claim according to the quotation from Exquisite Marques Sdn. Bhd. amounting to RM29,606.60.
9. According to Claimant's witness from Tone Motors, the car was in good conditions when they inspected it in August 2019. When he saw the car in January 2020, the car was in bad condition. The Claimant had left the car in a workshop after collecting it from the Respondent due to engine jerking. He had gone to inspect the car the next day and found that one of the cylinder was not functioning. He replaced the ignition coil and spark plug. He had also changed the Change Over Valve, water hose and water hose supply which was given by the Respondent.
10. The witness further stated that after changing the parts, he realised that the temperature was going up. He did not repair the car immediately. He left the car in that workshop for painting work and

had it towed to his workshop after Chinese New Year on 3.2.2020. Upon inspecting the car for over-heating, he found that the water pump, thermostat and the belt tensioner were not in good condition. He had repaired it and had billed the Claimant for RM3,950.00. He had loaned two tyres to Claimant as the tyres were in bad condition and he did not charge for it. He had also issued the quotation for other repairs and for changing some parts of the car amounting to RM24,785.00.

Respondent's Defence

11. According to the Respondent, the Claimant has agreed to buy the car "as is where is" for RM203,000.00. The Claimant had checked the car again in November 2019 and the Claimant was satisfied with the car. The Respondent had invited the Claimant to perform a 111-point check in order to qualify the car for warranty extension. However, the Claimant had rejected this offer.
12. The Claimant had only requested the Respondent to change three items in the car. These parts were delivered to the Respondent together with the car on 18.1.2020. There were no other complaints from the Claimant.
13. On 23.1.2020, the Claimant had sent a WhatsApp message showing the sign "check coolant level error" that had appeared.

Further, the Claimant had inquired from the Respondent as to whether he could introduce any workshop for him to repair the car problem. The Respondent has informed the Claimant that his workshop would only be open after 31.1.2020, as it was Chinese New Year. The Claimant had informed the Respondent that he would send to his own workshop.

14. On 31.1.2020, the Claimant had inquired from the Respondent as to the price of belt tensioner, water pump and thermostat. The Claimant had forwarded to the Respondent a quotation amounting RM5,420.00 from Tone Motor World for the repair of the car.
15. The invoice from Tone Motor World amounting RM3950.00 was for repairing and changing the Belt Tensioner, Thermostat and Coolant, and not for car jerking. The Claimant had not repaired the car until to-date and therefore the car is road worthy.
16. The Claimant had never complained to the Respondent about the tyres from 18.1.2020 until 3.2.2020. It was only on 3.2.2020, the Claimant had told him about the tyres. When the Respondent surrender the car to the Claimant, the tyres were in good condition. There is a possibility that these tyres could have been changed in the workshop.

Grounds of Decision

17. Based on the evidence adduced, the following material facts were established:

- (a) the Claimant had bought a Porsche motor car, model Panamera 2 V6 Registration No. SK 8788, from the Respondent for RM203,000.00. The Claimant paid a deposit of RM20,000.00 on 27.8.2019.
- (b) the car was transferred to the Claimant's name on 31.12.2019 and the Respondent had subsequently delivered it to the Claimant on 18.1.2020.
- (c) there was something wrong with the car from the day the car was delivered to the Claimant and the car had to be left in the workshop for repair until 3.2.2020. Thus it was not road worthy.
- (d) the Claimant had left the car in the workshop for painting and only had it towed to Tone Motor after Chinese New Year on 3.2.2020. Upon inspecting the car for over-heating, the Claimant's witness from Tone Motors had found the water pump, thermostat and the belt tensioner of the car were not in good condition. He had repaired and replaced the parts and had billed the Claimant RM3,950.00.
- (e) Tone Motors had loaned two tyres to the Claimant as the tyres were in bad condition and he had never charged for it. Tone

Motors had also issued the quotation for other repairs amounting to RM24,785.00.

18. The first claim that the Tribunal considered was whether the Claimant is entitled to claim the amount incurred and to be incurred in order to change and repair some parts the car, which the Claimant alleges not to be in good conditions.
19. There is a statutory implied guarantee under section 32(1) of the Consumer Protection Act 1999 where goods are supplied to a consumer that goods should be of acceptable quality. What is deemed to be of acceptable quality is stated in section 32(2) of the said Act. Thus, the car purchased by the Claimant from the Respondent should be of acceptable quality and therefore it should be fit and safe for the purposes for which the car was bought.
20. As it is a second hand car, it should at least be road worthy and safe and need not be in perfect condition. From the evidence adduced, this Tribunal finds that the car had a problem from the very first day, which has rendered the car not road-worthy. The Claimant had to send the car for repairs before he could drive use it safely. The Claimant had incurred the cost of RM3,950.00 in order to make it roadworthy. Therefore, this cost has to be borne by the Respondent.
21. The Claimant had also submitted two quotations, one from Tone Motors amounting to RM24,785.00 and another from Exquisite Marques Sdn. Bhd amounting to RM29,606.60 to change and repair

other parts of the car. The Claimant had alleged that the Respondent had cheated him and had changed some parts of the car, which has rendered the car not roadworthy. Due to this, repairs has to be done as quoted in the quotations.

22. The Claimant has opted to claim as quoted by Exquisite Marques Sdn. Bhd. Exquisite Marques was not called to give evidence that the car is not roadworthy without been repaired as stated in the quotation. The Claimant himself as agreed that he is still driving the car from 3.2.2020 until the date of oral evidence given in the Tribunal. The Claimant's witness from Tone Motors had said that the changes and repair of the parts as quoted in their quotation is due to wear and tear of those parts. There is no evidence to show that the Respondent has changed these parts as alleged by the Claimant. Therefore, there is no evidence forth coming from the Claimant to prove this part of Claimant's claim.

23. With regard to the tyres, from the evidence rendered, the Tribunal finds that the Respondent has raised doubt as to the Claimant's claim. The Tribunal agrees with the Respondent that there is a possibility that the tyres could have been changed when the car was left in the workshop. The Claimant was in communication with the Respondent from 18.1.2020 until 3.2.2020. During this period, the Claimant had never raised the issue about the damaged tyres to the Respondent. Only on 3.2.2020, the Claimant informed the Respondent about the damaged tyres. If the tyres were badly damaged as claimed by the Claimant, the Claimant or the Claimant's witness would have noticed the damaged tyres when the car was delivered to Claimant or in his friend's workshop. Therefore,

on the balance of probabilities the Claimant has failed to prove this claim.

24. Secondly, as for the compensation for loss of use of the car where the Claimant alleges that he had to rent or use other cars for his daily use, the Tribunal finds that the Claimant had failed to adduce any evidence to support this claim.
25. Thirdly, as for the compensation/damages claimed by the Claimant for the failure of the Respondent to deliver the car in its original conditions, the Tribunal could not consider this claim for want of jurisdiction as stipulated under the Consumer Protection Act 1999 and only the Civil Court could consider this claim.

Based on the above grounds, I have therefore ordered the Respondent to pay the Claimant RM3,950.00 within 14 days from the date of Award.

Dated this 16 Mac 2021

T.T

CHANDRA DEVI A/P LETCHUMANAN
PRESIDEN TRIBUNAL TUNTUTAN
PENGGUNA MALAYSIA