

**MALAYSIA**  
**IN THE TRIBUNAL FOR CONSUMER CLAIMS**  
**KOTA KINABALU**  
**CLAIM NO: TTPM-SAB-(B)-1-2019**  
**IN THE MATTER OF THE CONSUMER PROTECTION ACT 1999**

**BETWEEN**

**NG HONG KANG**

**... PIHAK YANG MENUNTUT**

**AND**

**TY AUTO CAR DEALER SDN. BHD**

**... PENENTANG**

**GROUND OF DECISION**

**PYM'S CLAIM**

The Pihak Yang Menuntut (PYM) saw an advertisement published in [www.mudah.com.my](http://www.mudah.com.my) dated 05.02.2018, that the Penentang had a used Land Rover Defender 110 HCPU Puma, Registration No. SS 6813 R, for sale (hereinafter referred to as "the said Car"). In the said advertisement, it was written that the said Car is in "*TIP TOP ORIGINAL CONDITION*" and "*NO NEED REPAIR*" (Refer to Lampiran B).

Being attracted with the advertisement, the PYM had on 24.02.2018 paid a deposit in the sum of RM 5,000.00 to the Penentang for the purchase of the said Car (Refer to the Official Receipt No. 0902 issued by the Penentang in Lampiran C). On the 27.02.2018, the PYM paid another

RM 50,911.39 to the Penentang being full payment of the purchase price (Refer to Official Receipt No.0905 and Payment Voucher dated 27.02.2018 in Lampiran C). According to the PYM, the said Car was purchased for his son, one Ng Yuting.

According to the PYM, there were technical problems with the said Car, amongst others, the engine, the turbo and the suspension, from the first day he bought the said Car until the day of the filing of his claim. Even though the PYM had spent RM 13,549.30 on the said Car, the problems still could not be solved completely. The chronology of events and the repairs done on the said Car can be seen in Lampiran G. The PYM also claimed that Land Rover Kota Kinabalu has found that there were problems with the injectors (Refer to the Test Report in Lampiran E), the wiring and computer of the said Car (Refer to Lampiran F).

The PYM claimed that he had been misled by the advertisement in [www.mudah.com.my](http://www.mudah.com.my) and intends to claim for the cost of repair in the sum of RM 13,549.30 that he had incurred on the said Car.

### **PENENTANG'S DEFENCE**

The Penentang's defence is that the said Car was sold on "as is where is basis" and no warranty is provided after the date of delivery (Refer to the Penentang's Delivery Order dated 02.03.2018). Prior to making payment, the PYM had tested drive the said Car. Further, the Penentang also claimed that the said Car had been sent to PUSPAKOM for examination and the report stated that the said Car is in good condition (Refer to the PUSPAKOM's Certificate).

The Penentang also claimed that the PYM had sent the said Car to other workshops which have nothing to do with the Penentang. Therefore, the repairs done by the workshops could have been improper thus causing all the problems to the said Car. The Penentang therefore refused to be responsible on problems of the said Car that could have been caused by the workshops and the PYM.

## **EVIDENCE**

The PYM called Mr. Goeffrey bin Samin (PYM-1), a mechanic in JR Line Auto Service who testified as follows:-

- (1) There was problem with the turbo of the said Car. PYM-1 then recommended the PYM to fix the said Car at Lee Turbo;
- (2) PYM-1 also fixed the other problems of the said Car and they had been fixed. The things and services done on the said Car can be seen from the receipts in PYM's Lampiran;
- (3) There are still some other problems with the said Car;
- (4) Someone who is not familiar with car would not be able to identify the problem of the car during test drive.

The PYM also called Mr. Awang Ahmad bin Sulaman (PYM-2), a mechanic in Sime Darby Auto Connexion Sdn. Bhd. who testified as follows:-

- (1) PYM-2 checked the said Car, the wiring, engine, control module and fuel injector. These caused the said Car to have no power; and

(2) These are old problems that would not have broken down just like that in a short time.

The PYM also produced the Injector Test Report in PYM's Lampiran E to show that the injectors are not up to the normal value.

When asked if the Penentang has any question on the two witnesses called by the PYM, the Penentang said he did not have any question to ask them.

The Penentang maintained its stance that since they are selling second hand cars, no warranty is provided and cars are sold on "as is where is basis". The Penentang also claimed that the problem could have been caused by the poor quality of diesel used. Unfortunately, no evidence to the same was ever provided by the Penentang. When asked about the advertisement on [www.mudah.com.my](http://www.mudah.com.my), the Penentang said the advertisement was not published by him and claimed that even though it was stated there that "NO NEED REPAIR", the PYM still had the opportunity to test drive the said Car and to decide whether to purchase the said Car. The Penentang also said that the said Car was in running condition.

Neither did the Penentang call any witness to support its claim that the problems of the said Car was caused by the third party workshops nor challenge the evidence of PYM-1 and PYM-2 at least to show that the problems of the said Car would not affect the functionality of the said Car.

## **FINDINGS**

The Penentang claimed that they are selling second hand car to the PYM, and that the PYM could not expect the said Car to be like a new car.

**Section 32 (1) of the Consumer Protection Act 1999** provides that:

*“Where goods are supplied to a consumer there shall be implied a guarantee that the goods are of acceptable quality.”*

Pursuant to **Section 32 (1) of the Act**, even though the car supplied by the Penentang is a used car, there shall still be implied a guarantee that the said Car is of acceptable quality.

Is the advertisement misleading?

The statement in the advertisement published in [www.mudah.com.my](http://www.mudah.com.my) that the said Car is of “*TIP TOP ORIGINAL CONDITION*” and “*NO NEED REPAIR*” would give someone an impression that the said Car is in almost perfect condition. In the circumstances, I find that the advertisement is misleading and that the PYM had relied on the advertisement when purchasing the said Car. Even though the PYM was given an opportunity to test drive the said Car, he was only able to test drive the said Car from the Penentang’s shop in Bundusan to somewhere around Bukit Padang and he could not identify the real problem of the said Car. PYM-1 also testified that if someone is not familiar with car, he might not be able to identify the problem of the car during test drive.

### The Delivery Order signed by the PYM

The Penentang contended that since the PYM had signed the Delivery Order dated 02.03.2018, the PYM shall be deemed to have agreed and accepted the terms stated therein i.e. (1) No warranty after the date of delivery; and (2) vehicle is sold on “as is where is basis”. The justification relied by the Penentang is that they are selling second hand cars, therefore cars are sold on “as is where is basis” and they could not provide warranty to customer.

**Section 24C (1) of the Consumer Protection Act 1999** provides:-

*“A contract or a term of a contract is procedurally unfair if it has resulted in an unjust advantage to the supplier or unjust disadvantage to the consumer on account of the conduct of the supplier or the manner in which or circumstances under which the contract or the term of the contract has been entered into or has been arrived at by the consumer and supplier.”*

I find that the term that “*Vehicle sold with no warranties from TY Auto Car Dealer Sdn. Bhd. after the date of delivery*” in the Delivery Order signed by the PYM is unfair contract term because the Delivery Order is a standard form and prior to or at the time of entering into the contract, the terms of the contract were not subject to negotiation. The PYM did not have bargaining strength to the term stated in the Delivery Order. Therefore, it is unfair for the Penentang to rely on that particular term to discharge their liability.

Is the said Car of acceptable quality?

Having considered the documentary and oral evidence of the parties in this case it is my finding that:-

- (1) PYM-1 has testified that there were many problems with the said Car and he had repaired some of the problems. His evidence was never challenged by the Penentang;
- (2) PYM-2 testified that when he checked the said Car, he found that the wiring, engine, control module and fuel injector also have problems. These caused the said Car to have no power. PYM-2 also testified that these are old problems which would not occur in just a short period of time. Again, the Penentang did not challenge his evidence;
- (3) The odometer showed that when the PYM purchased the said Car on 27.02.2018, it was at 92,545 KM and on around 24.12.2018, it was at 93,561 KM. The Penentang again did not challenge this fact. I therefore find that the PYM's evidence that there were problems of the said Car since he purchased it to be true as the said Car has only run for about 1,016 KM for a period of 10 months;
- (4) The Penentang contended that the said Car had been sent to PUSPAKOM for examination and that PUSPAKOM had issued a certificate to certify that the said Car is in good condition. For this, I agree with the PYM that PUSPAKOM only examined the identity of the said Car but did not examine the overall performance of the said Car;

- (5) The PYM had incurred RM 13,549.30 for the repair of the said Car since April 2018 until December 2018 which the PYM had attached the invoices and receipts in Lampiran G. Again, the repairs done on the said Car, the invoices and receipts were never challenged by the Penentang;
- (6) Taking into consideration the above factors, I find that the said Car is not of acceptable quality therefore the Penentang has breached **Section 32 (1) of the Consumer Protection Act 1999.**

I therefore make the following Award Borang 10:-

The Penentang hendaklah membayar balik RM 13,549.30 kepada Pihak Yang Menuntut dalam tempoh 14 hari dari tarikh Award.

Dated this 21<sup>st</sup> February 2019

T.T  
**YONG PEI YI**  
PRESIDEN TRIBUNAL TUNTUTAN  
PENGGUNA MALAYSIA