

**IN THE CONSUMER CLAIMS TRIBUNAL MALAYSIA
AT BINTULU, SARAWAK**

CLAIM NO.: TTPM-Q-(B)-2-2024

BETWEEN

**MELVIN GERAMAN BIN PATRICKS
NO. KP**

CLAIMANT

AND

**SHS AUTO RICH COMPANY
(20180448)**

RESPONDENT

GROUND OF JUDGMENT

Claimant's Claim:

1. The Claimant filed his case in Borang 1 and Borang 3 before this tribunal to cancel the purchase transaction of the used car Mercedes Benz W140 S320 ("the said car") and asks for the refund of money paid to the Respondent for failing to supply and deliver possession of the said car to the Claimant in good condition since year 2021 despite full purchase price of RM19,800.00 was paid to the Respondent.

Respondent's Defence:

2. The Respondent in Borang 2 contended that the Claimant only paid up RM18,500.00 despite the selling price of the said car was RM19,800.00.
3. The said car is in good condition.

4. The Respondent also stated that the Claimant took up 21 months to pay the sum of RM18,500.00.

Evidence:

5. From the documentary and oral evidence of the parties in this case: -
 - The Claimant purchased the said car for RM19,800.00 from the Respondent through the Respondent's agent by the name of Gabriel Lau Siek Giek ("the Respondent's Agent") in year 2020.
 - There was no written contract with terms and conditions executed between the Claimant and the Respondent for the supply of the said car.
 - The payment of the said vehicle was by way of installment payments over a period from April, 2020 till November, 2021.
 - The respective receipts for the payment of RM18,500.00 in installments had been issued in the name of the Claimant's wife by the Respondent.
 - There was no sufficient evidence to show that the Respondent had ever made any complaint to the Claimant about the duration of which the Claimant took up to pay the instalment payments.
 - The Claimant failed to tender proof of payment for the balance sum of RM1,300.00 despite claiming full payment of RM19,800.00 had been made to the Respondent.
 - There was also no sufficient evidence given before the Tribunal that the Respondent had requested for the payment of the final balance sum of

RM1,300.00 from the Claimant despite the Respondent said that a sum of RM1,300.00 has not been paid by the Claimant.

- It is an undisputed fact that the Claimant has not received the said car until now and the possession of the said car is still with the Respondent.

- There is no evidence to show that the Respondent or his agent had ever expressly made known to the Claimant about the payment term or any other contractual matters including interest charge, maintenance/service fees, cost of repair, storage rental etc of which the Claimant also requires to bear the costs prior to or at the time of purchase of the said car.

- The Respondent did not dispute and/or deny the WhatsApp messages exchanged between the Claimant and Gabriel regarding the problems of the said car which the Claimant tendered as evidence before this tribunal.

- The Claimant is willing to accept the sum of RM18,000.00 for the refund by the Respondent.

Findings

6. The responsibility to bear all the maintenance costs and incidental expenses respecting the said car lies with the Respondent given that the Respondent or his agent had never expressly made known to the Claimant about the payment term or any other contractual matters including interest charge, maintenance/service fees, cost of repair, storage rental etc of which the Claimant also requires to bear the costs prior to or at the time of purchase of the said car. Hence, the Respondent is not entitled to ask the Claimant to bear the maintenance/service fees and the rental for the storage of the said car.

7. The Tribunal is convinced that the said vehicle indeed has problem with the gearbox and that the Respondent had requested the Claimant to come out with some money to order the gearbox through the evidence of the WhatsApp message of the Respondent's shareholder Sim Hock Sing which the Respondent's agent had forwarded to the Claimant.

8. The Respondent did not tender any expert evidence or called up any expert as witness to give evidence concerning the condition of the said vehicle.

9. Section 32 (1) and (2) of the Consumer Protection Act 1999 provides that:-

(1) Where goods are supplied to a consumer there shall be implied a guarantee that the goods are of acceptable quality.

(2) For the purposes of subsection (1), goods shall be deemed to be of acceptable quality:-

(a) if they are -

(i) fit for all the purposes for which goods of the type in question are commonly supplied;

(ii) acceptable in appearance and finish;

(iii) free from minor defects;

(iv) safe; and

(v) durable; and

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10. Taking into consideration of the evidence before the Tribunal, the said car which is to be supplied by the Respondent is having issue concerning the gearbox and thus is not of acceptable quality.
11. The Tribunal therefore make the following Award 10:-
 - a. The Respondent is to refund RM18,000.00 to the Claimant within 14 days from the date of Award.
 - b. The Respondent's counter-claimed is hereby dismissed.

VIOLET YONG WUI WUI
PRESIDENT
CONSUMER CLAIMS TRIBUNAL MALAYSIA
DATED: 12 JULY 2024