

SOUTH AFRICA / JUDGMENT

Barnard v Auto I Paarl (Pty) Ltd t.a Auto Investments Paarl (NCT/302182/2023/75(1)(b)) [2024] ZANCT 65 (7 October 2024)

[2024] ZANCT 65

COURT

National Consumer Tribunal

BEFORE

S Hockey, A Potwana, N Maseti

CASE / FILE NUMBER

NCT/302182/2023/75(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/302182/2023/75(1)(b)

In the matter between:

TATUM CELESTE BARNARD

APPLICANT

and

AUTO I PAARL (PTY) LTD

RESPONDENT

T/A AUTO INVESTMENTS PAARL

Coram:

Mr S Hockey Presiding Tribunal member

Dr A Potwana Tribunal member

Ms N Maseti Tribunal member

Date of the hearing: 17 September 2024

Date of judgment: 07 October 2024

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Tatum Celeste Barnard (the applicant), a consumer as defined in section 1 of the Consumer Protection Act, 2008 (the CPA)[1]. At the hearing of this matter, the applicant represented herself.
2. The respondent is Auto I Paarl (Pty) Ltd, trading as Auto Paarl Investments (the respondent), a company incorporated under the company laws of South Africa and a supplier as defined in section 1 of the CPA. At the hearing, the respondent was represented by Mr Quinton Horn, an attorney from Horn Attorneys.

APPLICATION TYPE AND JURISDICTION

3. The applicant previously referred her complaint to the National Consumer Commission (the NCC), who, after an assessment thereof, concluded on 9 November 2023 that the redress sought by the applicant could not be provided in terms of the CPA. The NCC noted that the applicant's complaint resulted from defective fuel with which the vehicle was filled and that the respondent could not be held liable for defects caused by a third party.
4. Thereafter, the applicant referred this matter to the National Consumer Tribunal (the Tribunal) in terms of section 75(1)(b). This section provides that if the NCC issued a notice of non-referral as it did in the present matter, the complainant may refer the matter directly to the Tribunal, with leave of the Tribunal. The Tribunal granted such leave on 19 April 2024.
5. Accordingly, the Tribunal has jurisdiction in terms of section 73(2)(b) and section 27(a)(ii)[2] of the National Credit Act, 2005 (the NCA) consider all this matter.

BACKGROUND

6. The following facts are common cause:
 - 6.1. On 22 June 2023, the applicant purchased a used 2015 Mazda CX5 (the vehicle) from the respondent for a selling price of R306 640.00.
 - 6.2. About three weeks later, on 13 July 2023, the warning lights on the vehicle's dashboard illuminated, and the vehicle went into limp mode.
 - 6.3. The respondent collected the vehicle and provided the applicant with a courtesy vehicle.
 - 6.4. The respondent conducted a diagnostic test on the vehicle, which revealed that the oil pump pressure was low. The respondent replaced the diesel filter, drained the sump oil, and cleaned the other filters. According to the applicant, the respondent told her that the problems arose because dirty diesel was put in the vehicle, causing a blockage of the pipes. The respondent did not deny this in its answering affidavit.

6.5. The vehicle was returned to the applicant on 17 July 2023, but not long thereafter, on 28 July 2023, it stalled. The applicant had the vehicle towed to her residence by her insurance company. The respondent collected the vehicle from her home later the same day. The applicant was again provided with a courtesy vehicle from 29 July 2023.

6.6. The respondent inspected the vehicle and advised the applicant that the problem was related to the contaminated diesel that was put in it. The respondent further informed the applicant that the contaminated diesel caused serious damage to the vehicle and that the diesel injectors and pump needed to be replaced. The respondent proposed to repair the vehicle at no labour costs and that she would have to claim under her motor warranty for the costs of the parts. The applicant rejected this offer.

6.7. The applicant referred her complaint to the Motor Industry Ombudsman of South Africa (MIOSA), who, after an investigation, failed to resolve the matter. The applicant thereafter referred the matter to the NCC, which, after assessing it, issued a notice of non-referral.

6.8. The applicant appointed an independent assessor who collected the vehicle from the respondent on 27 November 2023. The independent assessor eventually repaired the vehicle and charged the applicant R1 500 for a comprehensive report and R6 000 for mechanical labour, stripping, and reassembling the vehicle. The independent assessor also charged the applicant R4 500 for a meeting between them, a call-out, and mediation[3].

6.9. The vehicle has been in good running condition since the repairs were done.

FURTHER SUBMISSIONS BY THE APPLICANT

7. The applicant submits that she had lost all trust in the respondent. She claims the respondent refused to take accountability for their errors and poor workmanship. She argues that they should be held liable for not thoroughly inspecting the vehicle before it was sold to her.
8. In her replying affidavit, the applicant confirmed that the independent assessor cleaned and repaired the vehicle's injectors and the vehicle has been running smoothly ever since.
9. The applicant further denies that the vehicle's problems were caused by dirty diesel. She avers that she had driven the vehicle for only 1146 km when it first broke down, and it was impossible for her

to have filled it up more than once before then. She also questions why the alleged contaminated diesel drained from her vehicle on 13 July 2023 was sent for testing only on 21 September 2023.

10. The applicant claims that under the circumstances, she is entitled to relief in terms of sections 55 and 56(2). In her referral form, she claims "a full refund or to be compensated for all the financial implications involved as well as the stress and anxiety experienced during these past few months."

SUBMISSIONS

BY THE RESPONDENT

11. The respondent submits that the applicant's problems with the vehicle were caused by contaminated diesel, which she had filled the vehicle with. They had the diesel tested, and the test results confirmed that it was contaminated.
12. They further argue that the oil sludge found in the tappet cover was not relevant to the injectors' failure. The vehicle was eight years old and would show marks of oil sludge or carbon deposits. Contaminated diesel could cause carbon deposits. They suggested replacing the injectors rather than cleaning them (as the independent assessor did).
13. The respondent submits that once the vehicle was removed from their premises and repairs were made, they cannot be held liable or responsible for the quality of the repairs. The respondent noted that the vehicle has been working perfectly since December 2023.

RELEVANT LEGAL PROVISIONS

14. The applicant relies on the provisions of sections 53, 55 and 56.
15. Section 53 sets out the definitions that are relevant to sections 54 to 61. The definitions of “defect” and “failure” are relevant. They are defined as follows:

“defect” means—

- (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or
- (ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;

“failure” means the inability of the goods to perform in the intended manner or to the intended effect;

16. Section 55 provides for a consumer’s right to safe, good and quality goods. Section 55(2)(a) to (c), in particular, deals with a consumer’s right to receive goods that (a) are reasonably suitable for the purpose for which they are generally intended, (b) are of good quality, in good working order and free of any defects, and (c) will be usable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of the supply.

17. Section 56(2) grants a consumer the right to return goods to the supplier within six months after delivery at the supplier's risk and expense if the goods fail to satisfy the requirements and standards contemplated in section 55. In such an event, the supplier must, at the direction of the consumer, either replace the failed, unsafe or defective goods or refund the consumer the price paid for the goods.
18. Section 56(3) provides that if a supplier repairs any particular goods or any component of any such goods, and within three months after the repair, the failure, defect or unsafe feature has not been remedied, or further failure, defect or unsafe feature is discovered, the supplier must either replace the goods or refund the consumer the price paid by the consumer for the goods.

ANALYSIS

19. After the vehicle broke down for the second time, the applicant required the respondent to repair it. There is no evidence that the applicant required a refund or a replacement of the vehicle in terms of section 56(3). She engaged the services of an independent assessor who collected the vehicle from the respondent's premises for testing.
20. The independent assessor reported that they removed the vehicle's injectors, had them professionally cleaned, and refitted them to the vehicle. Thereafter, they drove the vehicle and carried out diagnostic tests. They confirmed that the engine delivery of power was normal and that no faults were present. The vehicle was found to be in perfect running order.[4]
21. The applicant confirmed during the hearing that she had been using the vehicle since December 2023 without any issues.
22. It must be noted that the respondent provided the applicant with a courtesy vehicle for almost the entire duration that the vehicle was with it.
23. Even if the cause of the problems was contaminated diesel, the applicant did not elect to exercise the rights afforded to her under section 56(3). Instead, she had the vehicle removed from the respondent's premises and had it repaired at her instance. She has had full use of the vehicle since December 2023, yet now claims a refund of its purchase price. The intention behind sections 56(2) and
- (3) is not to afford a consumer the use of goods and a refund for its purchase price. The return of the goods to the supplier is essential for the reliance on a refund of its purchase price.
24. In the circumstances, the applicant is not entitled to the relief she seeks and the application must fail.

THE ORDER

25. In the result of the aforesaid, the following order is made:

25.1. The application is dismissed.

25.2. There is no order as to costs.

S Hockey (Presiding Tribunal member)

Tribunal members Dr A Potwana and Ms N Maseti concur.

- [1] A reference to a section in this judgment will be a reference to a section of the CPA.
 - [2] This section provides that the Tribunal or a member of the Tribunal acting alone in accordance with the NCA or the CPA may adjudicate in relation to any allegations of prohibited conduct.
 - [3] The attempted mediation by the independent assessor was not successful.
 - [4] See the report of the independent assessor on pages 189 to 193 of the record.
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