



**PROCEDURA EWROPEA GHAL TALBIET
ZGHAR**

**GUDIKATUR DR.
GRETA MIFSUD**

Seduta tas-16 ta' Gunju, 2011

Talba Numru. 2/2011

Brian Gilford

Vs

Andrew Howie

This Tribunal,

Examined the applicant's claim whereby he is seeking settlement in the amount of two thousand Euro (€2,000), which amount represents damages caused to his vehicle *Toyota RAV 4* that he had purchased from the Respondent on the 25th August, 2010.

The Applicant had purchased the vehicle from the respondent for the price of nine thousand and five hundred sterling (£9, 500) equivalent to ten thousand

seven hundred and eighty Euro and eighty seven cents (€10,780.87).

After driving overland to Malta, he realized that the car was not working well.

He informed the respondent about this, but he was uncooperative and told him that he found no problem if Applicant took him to court.

The Applicant had visited the company Michael Debono Limited on the 7th September, 2010, to acquire an estimate of the damages that the vehicle had and subsequent to this he wrote to the respondent asking him to settle the amount of damages.

The Applicant had carried out the remedial works and these amounted to three thousand and five Euro and fifty cents (€3,005.50), which amount was less than the estimate quoted and this was because on payment he was given a twenty percent (20%) discount.

Michael Debono Ltd. presented a declaration, whereby it confirmed that the damages caused were not due to the usual "wear and tear."

Consequently the applicant filed a complaint with the European Consumer Centre regarding this issue, who in turn contacted the Respondent and after the first contact, he replied that he was not prepared to believe that the remedial works had taken place. On the second occasion that the Centre tried to communicate with the Respondent, he did not acknowledge them.

The Tribunal also examined the Respondent's reply, wherein he was contesting the Applicant's claims, although he did confirm that he had sold him the vehicle Toyota RAV 4, bearing registration number GV 56 7 PP, for the sum of nine thousand and five hundred sterling (£9, 500) equivalent to ten thousand seven hundred and eighty Euro and eighty seven cents (€10,780.87).

He also confirmed that prior to selling the vehicle, he had taken it to be examined by a Toyota specialist and no defects were detected.

He also pointed out that the car mileage was that of eighty one thousand miles (81,000 miles), quite a big mileage, considering the kind of vehicle, but after all he had taken this into consideration, when he established the sale price.

Respondent also remarked that the Applicant had never mentioned that he was buying the vehicle for his wife, but instead he had told him that he was interested in dealing in car sales.

Respondent also pointed out that within a period of 13 days, the Applicant had drove, six thousand miles (6,000miles) and this was calculated from the moment of sale. This meant that he had reached a mileage that was equivalent to use of vehicle over a period of six months.

To determine the quality of a car, the age and the mileage of the vehicle have to be taken into consideration and this respect, since the car was not new and had a big mileage and the Applicant had made use of it as though he had been driving it for a period of six months, such damage was inevitable.

The Applicant exhibited the various documentation to confirm that he had informed the UK European Consumer Centre (UK ECC) , who in turn referred the claim to the Respondent. The said Centre confirmed that the vehicle, Applicant bought from the Respondent had problems, in that when the former was driving down overland from England, the engine was heating up more than usual and he had to stop driving several times.

The Applicant had to take his car to be repaired at a mechanic so as to determine what the problem was. The mechanic established that the radiator hoses had hardened and this prevented air passing through the coolant tank that would cool it. During these

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investigations, the cylinder head and the engine block were found to be defective.

The damages were discovered soon after the vehicle was purchased and therefore it was sold with defects.

The UK ECC had informed the Respondent that the Applicant was expecting to be reimbursed for such damages in the sum of three thousand five hundred and thirty three Euro (€3,533), (today this amount has been reduced to fall within the competence of this Tribunal) and this in full and final settlement of his expenses to repair the vehicle.

The UK ECC quoted Directive 1999/44/EC Sale of Consumer Goods and Associated Guarantees” – “***Any goods sold in a course of a transaction between a trader and a consumer should be of Satisfactory Quality. Satisfactory Quality means that the goods should be durable, taking into consideration the price and the age of the goods. They should also be fit for purpose and also should be free from minor defect.***”

Respondent replied to the Centre and denied having sold a defective vehicle and this was because prior to the same he had taken it to a Toyota specialist to examine it and he had confirmed that the vehicle was in a good condition. He also added that initially, the Applicant had complained that there were only problems with the head gasket,” and if this was the case, he could not accept to pay three thousand Euro (€3,000) for it to be repaired.

The Applicant, had in actual fact ordered that the vehicle be repaired and was claiming reimbursement of these repairs, because the sale was not of a satisfactory quality.

Having examined all Tribunal acts and documents that have been exhibited.

The Tribunal concludes as follows:-

Applicant filed this claim to be reimbursed the sum of two thousand Euro (€2,000) after purchasing from Respondent a vehicle, on the 25th August, 2010, from England, that was defective and had to be repaired and is hereby claiming these expenses.

Respondent insists that the vehicle was not defective, but the damage caused was due to the fact that the car was not new and within one week, Applicant had made use of it so much, that the mileage raised was equivalent to a mileage that should have been raised over a six month period.

From the evidence produced, Applicant had driven the car overland to Malta, but within a fortnight, from its date of purchase, he had already taken the vehicle to be repaired at Michael Debono Limited and this was on the 7th September, 2010. The cause apparently was because of *“compression in cooling system.... The radiator hoses became hard and coolant was noted coming out from expansion tank.”*

After having examined the engine, Michael Debono Limited confirmed that *“Upon further investigation, cylinder head and engine block were found to be warped. Such damage does not occur due to normal wear and tear.”*

This conclusion contradicts that reached by the Respondent, in that when he sold the vehicle, its mileage was already high considering the car's date of manufacture. When he sold the car, it had a mileage equivalent to eighty one thousand miles (81,000miles) and he calculated a mileage of twelve thousand miles (12,000 miles) per year. He reiterated that if within a fortnight, the Applicant had reached a mileage of eighty seven thousand miles (87,000miles), he had reached six thousand miles (6,000miles), that according to him should have been reached within a period of six months and not a fortnight.

The Tribunal examined and evaluated this argument raised by Respondent,, but after having made its considerations based upon Respondent's calculations, the Tribunal's calculations differ, in the sense that over a span of one year eighty one thousand miles (81,000miles) on average would mean twenty thousand two hundred and fifty miles (20,250miles) and this considering that Respondent had owned the vehicle for a period of four years eighty one thousand miles dived by 4 years (81,000/4). On a monthly basis, there would be a one thousand six hundred and eighty seven point five miles (1,687.5miles) covered.

Within a fortnight, the Applicant had driven overland and therefore, it was quite expected to have a higher mileage than usual and in this case there was a six thousand miles (6,000miles).

In actual fact, the Respondent admitted that the vehicle he sold had quite a high mileage and the car was old, but a four year old car is not too old after all.

The reality is that the period from the date of purchase to when the damages resulted, was very short to exclude that the car was not defective. The investigations that were carried out were intensive, until the real problem was established.

From the beginning, the problems were attributed to the *cylinder head* or the *engine block* or to the *head gasket* and Respondent himself mentioned that the problems were all being caused from the *head gasket*.

This Tribunal was established to determine whether the sum claimed by Applicant was due by Respondent.

Michael Debono Limited, established that the damages caused to the vehicle purchased by the Applicant was not due to normal "wear and tear", that usually would lead to ordinary damages, but in this case, the damages were more complex and they were identified as being such. In consideration of this, the Tribunal feels that the

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Applicant's version is more credible than that of Respondent.

For such reasons, the Tribunal confirms the Applicant's claims have to be upheld and is hereby condemning the Respondent to pay the Applicant, the sum of two thousand Euro (€2,000), a sum representing damages caused to the vehicle Toyota RAV 4, purchased from the Respondent on the 25th August, 2010.

With costs and interests due from the 5th November, 2010.

< Sentenza Finali >

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