Navigating Consumer Rights: Remedies for Defective Motor Vehicles

Purchasing a car is a significant commitment, and when it turns out to be faulty, it may be quite frustrating. Fortunately, consumers enjoy many remedies under the Consumer Protection Act 68 of 2008(CPA), which offers several remedies to guarantee that they are not saddled with substandard products. If you are in possession of a faulty motor vehicle, these are the main remedies accessible to you under the CPA as well as the appropriate legal recourse.

Section 56 of the CPA provides consumers with an implied warranty of the quality of the goods. In essence, consumers are guaranteed that the goods are of a quality capable of being used for it's intended purpose, that the goods are of good quality and free from any defects. In the event that the goods fall short of this requirement, consumers have the right to return the goods and ask for repair, replacement or a refund within six months. It has been noted in several case law that the court is not open to readily granting a refund remedy and the consumer should first offer the service/dealership a right to repair the goods.

In light hereof, an important aspect to consider is what qualifies as a defect for purposes of a remedy under the CPA. In section 53 of the CPA, it defines a defect as a material imperfection that renders the goods less acceptable than a person would be reasonably entitled to expect in the circumstances. That the characteristics of the goods, should render it less useful, practicable or safe than consumers would generally reasonably be entitled to expect in the circumstances.

This definition makes it clear that not all defects would qualify as a defect for purposes of a remedy under the CPA and that each case will have to be assessed on it's own merits.

In the recent case of Lazarus Motor Company v Robert 2024 ZAGPPHC 423, the consumer had a complaint of rust on the bolts in the vehicle rear loading compartment of the vehicle as well as the undercarriage. The dealership alleged that the consumer spilled acid and this caused the rust. This argument did not hold any water as the court indicated that there was no evidence to support such

a claim and that the rust was found under carpets, and if there was an acid spill, why the rust started manifesting under the carpets and not on the carpet. The Court confirmed that the rust in the motor vehicle was directly linked to the definition of a defect under the CPA. Therefore, the consumer qualified for a remedy under the CPA. The dealership was ordered to remove the rust and repair the vehicle.

Also, in the case of Motus Corporation (Pty) Ltd and Another v Wentzel (1272/2019) [2021] ZASCA 40, the Court considered whether the complaints by the consumer, which included a warning light being on, noise when travelling over 70km per hour, loose roof racks and a failing Bluetooth connection, qualified as a defect under the Act. The Court confirmed that it indeed amounted to a defect. The consumer wanted a refund remedy, but the Court concluded that, as per sec 56(3) of the NCA, the supplier is afforded an opportunity to repair the goods and in the event that the defects manifest itself again within three months after being repaired then the consumer would be entitled to a refund remedy.

In terms of section 69 of the CPA. the consumer can enforce their rights by referring the matter of a defective motor vehicle directly to the National Consumer Tribunal, alternatively to the Motor Industry Ombudsman of South Africa (MIOSA). At either of these forums, the consumer will submit their complaint, and the dealership/service provider is provided with an opportunity to respond. The forum will then conduct their own investigation and make a finding.

Lastly, as mentioned in the Wentzel case mentioned above, the consumer has the right to approach a Court directly for relief and there is no need to exhaust the internal remedies first. The Court mentioned that the purpose of the Act is to protect consumers interest and there is no reason why they should be prohibited from seeking immediate relief from a court.

The Consumer Protection Act establishes critical remedies for consumers dealing with faulty motor vehicles, assuring fair treatment and justice. Consumers can safeguard their interests while requesting repairs, replacements, or refunds, depending on the circumstances.

Understanding these rights is critical to efficiently enforcing your rights as a consumer. I would advise anyone struggling with a defective vehicle to first obtain legal advice.