



MALTA

Fit-Tribunal tal-Konsumatur

Giuseppina Inghilterra

vs

Motomania - Kenneth Gatt

CCT/ 121/17

20th August 2017

The Tribunal

Having seen plaintiff's claim of the 28th June 2017 wherein she requested the refund of €2,100 being the price of a motor scooter Piaggio Typhoon 125cc which she purchased from defendant on the 24th April 2017, which scooter was defective.

Having seen that defendant was duly notified with plaintiff's claim on the 5th July 2017 but failed to present a reply within the time prescribed by law.

Having heard the evidence on oath and seen all the documents presented.

Considers

That on the 24th April 2017 plaintiff purchased a brand-new Piaggio Typhoon scooter from defendant for a trade-in price of €1,650. Plaintiff alleges that after a few days the throttle cable snapped and the engine had to be stopped by switching off the key. Plaintiff returned the scooter to defendant, who after inspection, found the cable to be corroded and at first claimed that plaintiff had passed through an acidic part of the street, which claim was denied by plaintiff.

That on further examination it was found that acid had leaked from the battery, found its way onto the throttle cable and corroded it to the point where it snapped. Other parts of the scooter that came in contact with this acid were also affected. Defendant then changed the battery to a sealed one, eliminating the problem completely as no acid can ever leak from this type of battery.

Plaintiff is also complaining that the screen was not screwed on properly.



Considers

That from the evidence presented and photographs exhibited, plaintiff's complaint is compatible with corrosion resulting from a leaked battery. This leak can happen if the battery itself is cracked or if the taps are not screwed on correctly and tightly. Either way this is a problem that might have originated from the factory or else on installation of the battery by defendant and is certainly not a problem that was caused by plaintiff. Still, there is nothing technically wrong with the scooter and once the corroded parts are seen to and replaced and the battery replaced with a sealed one, this problem will not recur. This problem has to be seen to in its entirety by defendant as both the scooter and the battery are under guarantee. It seems that the battery has already been replaced with a 12V 7AH sealed type. This is compatible with plaintiff's scooter and should suffer no damage or consequences even though the original battery was a 12V 9AH type. As to the rest of the corroded parts these have to be replaced after the corrosion is removed. The throttle cable was in fact removed and replaced but other parts seem to still be affected by corrosion. It is defendant's responsibility to see to this repair. If this does not happen because plaintiff no longer has faith in defendant, then she should receive compensated in a realistic amount to be determined by this Tribunal and effect the repairs herself.

That since the battery and cable have already been replaced, what is left to be seen to are the silencer and the visor and a general clean up where evidence of corrosion exists. The Tribunal does not feel that circumstances warrant a complete refund of the scooter and that an amount in damages would suffice.

For these reasons the Tribunal accedes in part to plaintiff's request and establishes *arbitrio bono viri* the amount of €400.00 in compensation/ damages which defendant is being ordered to pay plaintiff. Costs of the case are to be borne by defendant.

A handwritten signature in blue ink, appearing to read 'Michela Spiteri'.

Michela Spiteri LL.D
Arbiter