

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
[Citation: Warren v. Daimler Chrysler Canada, 2006 NSSM 8]

BETWEEN:

Name Robert (Bob) Warren

Claimant

Name Daimler Chrysler Canada

Defendant

Appearances:

Robert Warren, on his own behalf

Peter Sullivan, on behalf of the Defendant

DECISION

1. This matter came on before me on April 18, 2006. I heard the evidence of the Claimant Mr. Robert (Bob) Warren.
2. On behalf of the Defendant, I heard the evidence of Allan Hartling, the service manager at Steele Chrysler; and David Fougere, an automotive technician at Steele Chrysler. I also heard the submissions of Mr. Sullivan on behalf of the Defendant.
3. This matter involves a claim under an extended warranty issued by the Defendant in respect of a 2000 Dodge Caravan (“the van”). The Claimant, who is the owner of the van, claims coverage under the extended warranty for the repair of the van’s transmission. The Defendant admits that the damage would be otherwise covered, but says this damage is excluded by either one of two exclusions, which are set out below:

“service contract plans do not cover:

damages to covered components due to some external causes
and/or failure of non-covered components;

repairs required as a result of failure to properly care for or
maintain the vehicle; fire, accident or insurance write-off;
abuse or negligence; failure to properly operate the vehicle

(including modifications, alterations or added equipment); using the vehicle in competition events such as races or acceleration trials; pulling a trailer that exceeds the rated capacity of the vehicle or failure to adhere to the requirements for vehicles used to pull a trailer as outlined in the owner's manual.”

4. Mr. Warren purchased the van in the summer of 2005. At the time of the purchase, the van had roughly 57,000 kms on it. It was used primarily by his wife to go to work, for shopping and for driving the children about the city.
5. On December 14, 2005, Mrs. Warren was driving the van on the highway. She noticed some loud bangs, and then the car broke down. She was left stranded on the side of the road. She was eventually rescued, and the van was towed to Steele Chrysler.
6. Mr. Fougere inspected the van. He dismantled the transmission cover and noted that the differential pin was broken and rattling around inside the transmission casing.
7. He spoke to Mr. Hartling, who then spoke to the warranty representative at the Defendant. Together they came to the conclusion that the differential pin had broken as a result of “abuse” and that accordingly the claim under the warranty was excluded. They came to this conclusion for the following reason.
8. According to the evidence of Mr. Hartling and Mr. Fougere, this type of problem (that is to say, the differential pin coming loose and then breaking) only occurs when one wheel is stationary and the other wheel is spinning at a high rate of speed. Mr. Hartling gave evidence that the condition arises where there is “excessive wheel spin, which could be caused by water, ice, snow or dry pavement”. When he was asked in cross-examination how he would define “abuse”, he said that it arose when one wheel was stationary, and the other one was spinning, “like when you're stuck in snow or ice, that will cause this condition, this breaking of the pin.”
9. Because the Defendant refused to repair the transmission under the extended warranty, Mr. Warren took the vehicle to another repair shop. He had it repaired for \$4,352.00.
10. As noted above, it was not contested by the Defendant that the claim would be covered if the above-noted exclusions were not applicable. Mr. Sullivan also properly conceded that the onus of establishing the applicability fell on the Defendant.
11. In my opinion the Defendant failed to establish on the evidence that there was any “abuse” within the meaning of the exclusion.
12. According to Mr. Warren the car was used by his wife for the normal driving activities of a family car. This would certainly not constitute “abuse” as used in the exclusions.
13. I am also of the view that the evidence of Mr. Hartling and Mr. Fougere does not establish

“abuse” within the meaning of the exclusion. While Mr. Hartling and Mr. Fougere were of the view that a differential pin would not break if there was not “excessive spinning”, they did not say how long the wheels had to spin, or at what rate of speed, before a differential pin could break. I am left then only with the evidence that a car spinning its wheels because it is stuck in snow or on ice can lead to the breaking of a differential pin.

14. There was no evidence as to the foundation for this opinion, and in particular, how long the spinning had to occur before the pin could break. It could be one minute; it could be one hour. I accordingly cannot accept the argument that such an event constituted abuse within the meaning of the exclusion. Snow and ice are common events in Nova Scotia winters. The sound of spinning tires on a winter day is not uncommon. To suggest that any motorist whose differential pin breaks merely because he or she has spun their tires while trying to get up a hill, or out of a snow bank, would in my view push the meaning of “abuse” beyond the common understanding of that word, at least in the context of an automotive warranty.
15. I am accordingly satisfied that the exclusion is not triggered in this case, and that the Defendant is liable under the terms of the extended warranty for the cost of the repair.
16. I accordingly order the Defendant to pay to the Claimant \$4,352.00 plus costs.

Dated at Halifax, Nova Scotia
this 24th day of April, 2006

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ADJUDICATOR
W. Augustus Richardson, Q.C.