

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**CIVIL CLAIMS LIST**

VCAT REFERENCE NO. C1874/2010

**CATCHWORDS**

Motor vehicle, engine failure, whether repairer negligent, whether led to engine failure

<b>APPLICANT</b>	Edward Angleton
<b>RESPONDENT</b>	R.A. Chapman Automotive Pty Ltd (ACN 006 601 725)
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Gerard Butcher, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	27 May 2011 and 30 May 2011
<b>DATE OF ORDER</b>	28 July 2011
<b>CITATION</b>	Angleton v R.A. Chapman Automotive Pty Ltd (ACN 006 601 725) (Civil Claims) [2011] VCAT 1419

**ORDER**

- 1 The application is dismissed.
- 2 See also order in C4883/2010.

Gerard Butcher  
**Member**

**APPEARANCES:**

For Applicant	Mr P. Lithgow of Counsel
For Respondent	Mr C. Doidge of Counsel

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**CIVIL DIVISION**

**CIVIL CLAIMS LIST**

VCAT REFERENCE NO. C4883/2010

<b>APPLICANT</b>	R.A. Chapman Automotive Pty Ltd (ACN 006 601 725)
<b>RESPONDENT</b>	Edward Angleton
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Gerard Butcher, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	27 May 2011 and 30 May 2011
<b>DATE OF ORDER</b>	28 July 2011
<b>CITATION</b>	Angleton v R.A. Chapman Automotive Pty Ltd (ACN 006 601 725) (Civil Claims) [2011] VCAT 1406

**ORDER**

- 1 The respondent is to pay to the applicant the sum of \$3,179.00.
- 2 See also order in C1874/2010.

Gerard Butcher  
**Member**

**APPEARANCES:**

For Applicant	Mr C. Doidge of Counsel
For Respondent	Mr P. Lithgow of Counsel

## REASONS

- 1 Edward Angleton (*Mr Angleton*) is the owner of a 1989 Rolls Royce Silver Spirit (*the vehicle*). R.A. Chapman Automotive Pty Ltd (*Chapmans*) is a company specialising in the business of undertaking service and mechanical repairs to certain makes of motor vehicles, including Rolls Royce.
- 2 Mr Angleton's claim is for the cost of repairs to the engine of his vehicle after it suffered a catastrophic failure and reimbursement of the payment made to Chapmans for repairs carried out by Chapmans prior to the engine failure. Mr Angleton attributes the catastrophic failure to the negligence of Chapmans. Chapmans' counter claim is for the cost of storage of Mr Angleton's vehicle and the cost of disassembly and analysis of the engine.
- 3 The vehicle's engine is a 6.7 litre V8, the blocks and heads of which are aluminium alloy. The vehicle's odometer registered approximately 121,000 km when it was purchased for Mr Angleton as a birthday present from his family in February 2009.
- 4 Chapmans were engaged by the vehicle's vendor in February 2009 to identify work necessary to bring the vehicle to roadworthy condition. The vendor also engaged Chapmans to carry out certain repairs not required for a roadworthy certificate. Later in February 2009 Mr Angleton engaged Chapmans to carry out work necessary for the issuing of a roadworthy certificate. This was done by Chapmans.
- 5 There was a suggestion that Chapmans had been engaged to carry out a pre-purchase inspection. However, I am satisfied that this was not the case.
- 6 The history of the vehicle is not entirely clear. However, it can be seen from the vehicle's age and odometer reading that it had been driven considerably less than what one would expect of a *normal* vehicle. This substantiates the suggestion that the vehicle had been inactive for a substantial time prior to Mr Angleton's ownership. In addition, Mr Angleton gave evidence that it was his *Sunday car* and that he drove it at weekends to visit his daughter at Mia Mia or to spend weekends at his holiday house at Sorrento.

## SUMMARY OF EVENTS

- |   |                |                                                                                                                                                                  |
|---|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7 | 18 May 2009    | The vehicle lost all coolant and was delivered to Chapmans by tow truck pursuant to telephone advice from Chapmans to Mr Angleton to do so.                      |
|   | 13-21 May 2009 | Mr Angleton collected the vehicle.                                                                                                                               |
|   | 23 May 2009    | Mr Angleton advised Chapmans of some apparent coolant loss. Again Chapmans advised Mr Angleton to have the vehicle returned to them by tow truck. This was done. |

23 May 2009 – about 5 June 2009	Tests performed. No leaks detected. Vehicle collected by Mr Angleton.
13 June 2009	Vehicle returned to Chapmans. Mr Angleton reported losing coolant on long trips.
13-16 June 2009	Further tests performed. Test bottle installed on overflow tube. Dye added to coolant. Vehicle returned to Mr Angleton to allow extended run with test bottle installed.
On or about 2 July 2009 – 6 July 2009	Vehicle returned to Chapmans. Coolant with dye found in test bottle. Ironite added to coolant as diagnostic.
6 July 2009	Vehicle collected by Mr Angleton.
20 July 2009	Vehicle returned to Chapmans. Leak persisted.
20 July 2009 – 4 August 2009	Further tests. Plastic coolant expansion tank found to distort when hot allowing leak. Plastic coolant expansion tank replaced. Replacement leaked through faulty seam. Unable to source further replacement. Original tank replaced as it did not leak on local travel.
4 August 2009	Vehicle collected by Mr Angleton.
August 2009	Further plastic coolant expansion tank sourced.
17 August – 15 September 2009	Vehicle returned to Chapmans. Further plastic coolant expansion tank found to have same fault as previous one. Steel coolant tank fabricated and fitted to vehicle. Further test. No leaking into test bottle.
16 September 2009	Vehicle collected by Mr Angleton.
5 October 2009	Vehicle delivered to Chapmans for 5,000 km service.
6 October 2009	Service carried out by Chapmans.
7 October 2009	Vehicle collected by Mr Angleton.
12 October 2009	Vehicle suffered catastrophic engine failure.

## **NATURE OF THE CATASTROPHIC ENGINE FAILURE**

- 8 The circumstances aside it is common ground that the contents of the vehicle's coolant system were lost and the engine overheated. There is a question as to in which order these two events occurred.
- 9 The overheating of the engine resulted in softening of the aluminium alloy of the block and heads, distortion of the heads, dislodgment of one valve seat insert and rendering of cast iron liners and the piston assemblies as unserviceable. It is not known if the block and heads can be reclaimed with heat treatment to restore hardness.

## **EVIDENCE**

- 10 Mr Angleton gave evidence that the day before the catastrophic engine failure he drove the vehicle to Sorrento and drove locally in that area. The next morning he checked the water level in the steel coolant expansion tank and determined that two litres needed to be added, which he did. It must be noted that the sender switch from the original coolant expansion tank had been installed in the steel coolant expansion tank and, according to Mr Robert Chapman's evidence, had been tested and was working properly. Mr Angleton says that on this occasion the coolant level warning light on the dashboard of the vehicle did not come on.
- 11 Mr Angleton then drove the vehicle to Blairgowrie where he had a meeting, after which he drove towards Melbourne. At some stage, he noticed a burning smell but kept driving. He says that no warning light was illuminated. As he reached Doncaster he stopped the vehicle at traffic lights and noticed steam coming from the vehicle. He did not drive further but called for a tow truck and the vehicle was conveyed to Chapmans.
- 12 Mr Neil Chapman gave evidence that he received a telephone call from Mr Angleton on that day during which Mr Angleton described what had happened. Mr Neil Chapman says that he asked Mr Angleton if he had noticed the temperature gauge. He says that Mr Angleton answered in the negative but that in the morning the coolant level light was on and that is why he added two litres. This evidence was not challenged, despite being at odds with Mr Angleton's evidence that the light had not come on. If the light had been in operation in the morning this leads to a conclusion on the balance of probabilities, in the absence of any explanation as to why the light may not have operated thereafter, that the light was operating thereafter. Mr Angleton had been told by Chapmans on previous occasions that if the light came on whilst the vehicle was at some distant place such as Sorrento, he should not drive it back but should have it towed. He did not do this.
- 13 It should also be noted that whilst Mr Angleton's evidence is that he noticed a burning smell he gave no evidence of having checked the vehicle's temperature gauge. Indeed, it appears that he gave no attention to the presence of a burning smell and that he continued to drive on.

- 14 Expert evidence was given by Mr Ronald Murphy, an automotive engineer and Mr Robert McDermott, who holds no formal qualifications but who for many years was engaged in the business of restoring Rolls Royce vehicle and who stated that he had worked on thousands of Rolls Royce vehicles. Clearly Mr McDermott possesses expertise on these vehicles despite his lack of formal qualifications. However, Mr McDermott's evidence is viewed with some caution as there is clearly some animosity between himself and Mr Robert Chapman going back over some considerable time.
- 15 Mr Murphy gave the opinion that the engine overheated due to a large loss of coolant via one of the cylinder head gaskets. He did not consider other possible points of loss of coolant.
- 16 When asked when he considered the gaskets had failed, he gave two possible scenarios.
  - a. That the gasket experienced a progressive leak.
  - b. That a coolant escape led to gasket failure.
- 17 At this point I make the observation that no evidence was given of the engine actually overheating on any occasion prior to the day of the catastrophic failure.
- 18 Mr McDermott gave the opinion that the catastrophic failure was a clear example of the cylinder head gasket leaking at the combustion seal.
- 19 He was unable to tell if there had been such a leak prior to 12 October 2009.
- 20 Mr McDermott was recalled after Mr Robert Chapman gave evidence. Mr McDermott gave the opinion then that the coolant leak was not likely to have occurred as a result of a failure of a cylinder liner seal.
- 21 Mr Robert Chapman is the principal person involved in Chapmans. He is an automotive engineer with some 46 years experience. He gave evidence as to the various presentations of the vehicle to Chapmans and the tests and work carried out on each occasion. Significantly, the tests revealed no pressure problems and even more significantly, a Tee-Kay test which is a chemical test designed to determine whether a head gasket is leaking, was negative. Cylinders were inspected with a bore scope looking for coolant in the cylinders and *steam cleaning* effect caused by leaking coolant in the heads of inlet valves, tops of pistons and cylinder hose, with no indication of coolant leak. After coolant with red dye was detected in the test bottle, Irontite was introduced to determine if there was a small head gasket leak not picked up by the Tee-Kay test. This additive did not fix the leak. It was therefore concluded that the leak was external to the engine. The vehicle was operated on a dynamometer whilst an infrared gas analyser was used to test coolant volatiles for hydrocarbons. This test was negative. The conclusion of all tests so far is that there was no cylinder head gasket leak.
- 22 It was then that the course of action was taken in relation to the replacement of the coolant expansion tank.

- 23 Mr Chapman says that at this point the problem as it had existed was fixed. This is supported by evidence that after two weeks Mr Angleton stated to Mr Chapman that there had been no leakage on a trip to Sorrento, that there had been no coolant in the test bottle which was still installed in the vehicle and that there had been no need to add coolant. Further there was no need for work on the coolant system when the 5,000 km service was carried out on 6 October 2009.
- 24 The question is whether Chapmans were negligent in failing to detect a fault which could reasonably have been detected. On the evidence before me, Chapmans carried out what would be regarded as appropriate tests and made accurate observations. Their diagnostic procedure resulted in the detection and rectification of the problem as it existed. I am unable to conclude on the balance of probabilities that the catastrophic failure which occurred on 12 October 2009 was caused by their failure to detect a leak in a cylinder head gasket. There may have been a spontaneous failure of a pre-existing weakness which was undetectable. There may have been a failure of another component which in time led to loss of coolant resulting in overheating and this in turn leading to the failure of the cylinder head gasket. Also, I am not satisfied that Mr Angleton acted prudently by continuing to drive the vehicle back to Melbourne on 12 October 2009 after he noticed that the coolant level had dropped and further by continuing to drive the vehicle after he noticed a burning smell. In any case, there is sufficient uncertainty to lead me to conclude that Mr Angleton's case has not been made out to the appropriate standard of satisfaction. In all the circumstances, Mr Angleton's claim is dismissed.
- 25 As to the counterclaim made by Chapmans, I am satisfied that Mr Angleton requested the disassembly and analysis of the engine. The cost of this was \$2,244.00 together with external analysis by Orger Engines of \$1,474.00. Also, Mr Angleton should pay the cost of the storage of the vehicle by Chapmans up to 8 February 2011. This amounts to \$3,179.00.

Gerard Butcher  
**Member**

GB:RB