



HIGH COURT OF AUSTRALIA

6 November 2024

BILJANA CAPIC v FORD MOTOR COMPANY OF AUSTRALIA PTY LTD ACN 004 116

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[2024] HCA 39

Today, the High Court allowed an appeal and dismissed a cross-appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal and cross-appeal concerned the proper construction of s 272(1)(a) of the *Australian Consumer Law* ("the ACL") and were heard immediately after the appeals in *Williams v Toyota Motor Corporation Australia Ltd* [2024] HCA 38 ("*Williams*").

In 2012, the appellant purchased a Ford Focus that was fitted with a "DPS6" transmission and experienced various mechanical difficulties associated with that transmission. In 2016, she commenced representative proceedings against the respondent on behalf of persons who, between 1 January 2011 and 29 November 2018, had purchased motor vehicles either new or second-hand which were fitted with the "DPS6" transmission. The vehicles had at least one of five defects, being two "architectural" and three "component" deficiencies. The primary judge concluded that the vehicles were all supplied in breach of the guarantee of "acceptable quality" provided for in s 54(1) of the ACL. Section 271(1) of the ACL provides that if the guarantee under s 54 is not complied with, "an affected person in relation to the goods may ... recover damages from the manufacturer". Section 272(1)(a) of the ACL provides that "an affected person in relation to goods is entitled to recover damages for ... any reduction in the value of the goods, resulting from the failure to comply with the guarantee to which the action relates".

The primary judge awarded the appellant damages under s 272(1)(a) but did not have regard to whether the adverse consequences of each defect materialised in the appellant's vehicle or the fact that some of the defective components were replaced after the date of supply, as these factors were considered irrelevant to assessing "the value [of the vehicle] at the date of acquisition". The Full Court dismissed an appeal by the respondent and upheld a cross-appeal by the appellant. The Full Court remitted the assessment of damages under s 272(1)(a) to the primary judge to be re-assessed in accordance with the reasons of the Full Court in *Toyota Motor Corporation Australia v Williams* (2023) 296 FCR 514 ("*Toyota*"), which was the judgment the subject of the appeals in *Williams*. The Full Court found that the primary judge ought to have held that events after the time of supply were capable of bearing on the assessment of damages and erred in not considering information known at the time of trial and the appellant's use of her vehicle up until the time of trial.

The High Court held that, given its decision in *Williams* overturning various parts of the Full Court's reasoning in *Toyota*, the reasoning of the Full Court in this appeal cannot be sustained. Consistently with *Williams*, the Court held that in assessing damages under s 272(1)(a), later acquired knowledge of a defect in the goods, including the effectiveness, cost, inconvenience and timing of any repair of the defect, is to be attributed to a hypothetical reasonable consumer with full knowledge of the "state and condition of the goods" at the time of supply. The appellant's use of her vehicle is only relevant to the extent that use might bear upon an assessment of what a hypothetical reasonable consumer would, at the time of supply, have expected the vehicle's likely performance to have been prior to any repair. As neither the primary judge nor the Full Court assessed the damages payable under s 272(1)(a) in accordance with this approach, the proceedings were remitted to the primary judge to undertake that task in accordance with the High Court's reasons and the reasons in *Williams*.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.