

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**  
November 23, 1998  
Cecil Crowson, Jr.  
Appellate Court  
Clerk

JAN LORENA NEWSOME ) ANDERSON COUNTY  
00491 ) 03A01-9710-CV-  
Plaintiff-Appellee )  
v. )  
QUALITY BODY SHOP, INC. ) HON. JAMES B. SCOTT, JR.,  
Defendant-Appellant ) JUDGE  
AFFIRMED AS REMITTED  
and REMANDED

JOHN M. FOLEY OF KNOXVILLE FOR APPELLANT  
DAIL R. CANTRELL OF CLINTON FOR APPELLEE

O P I N I O N

Goddard, P.J.

Quality Body Shop, Inc., appeals a judgment rendered against it in favor of Jan Lorena Newsome in the amount of \$30,000, The damages were awarded as a result of a jury finding that Quality Body Shop, Inc., violated the Tennessee Consumer Protection Act in connection with the repair of her wrecked automobile.

Ms. Newsome's complaint was predicated upon three different theories: (1) violation of the Consumer Protection Act, (2) breach of express warranty, and (3) breach of implied warranty of merchantability.

At trial, prior to the beginning of testimony, counsel for Ms. Newsome abandoned all theories except that of violation of the Consumer Protection Act and the case proceeded to trial as to that theory.

The jury found that Quality Body had violated the Consumer Protection Act and awarded damages in the amount of \$20,000. The jury also found that Quality Body's violation was knowingly and wilfully made. Whereupon, the Trial Court awarded an additional \$10,000 pursuant to T.C.A. 47-18-109(a)(b).

Quality Body presents 22 separate issues (see Appendix A), principally complaining of admission of evidence and instructions to the jury.

This lawsuit had its genesis when Ms. Newsome, at the instance of her collision insurance carrier, took her 1989 Alfa Romeo Quadrifoglio<sup>1</sup> automobile to Quality Body to have the left front corner repaired because of an accident occurring on December 7, 1993. Her automobile was the top of the line for

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<sup>1</sup> "Quadrifoglio" means four leaf clover in Italian.

that particular model and, obviously, the apple of Ms. Newsome's eye.

According to Ms. Newsome, at the time she entrusted her automobile to Quality Body for repair she was falsely assured by the shop foreman in answer to her inquiry that Quality Body's employees had experience working on Alfas and that there would be no problem in repairing her car.

Although Ms. Newsome was pleased with the appearance of the car when she received it after the initial repair, it developed that a number of problems persisted, which she detailed in exhibits 15 and 16. See Appendix B. She testified that the damage sustained by her, being the difference in value of the automobile if repaired as it was represented that it would be and as in fact it was repaired, was \$9500. She also testified she incurred attorney fees and other litigation expenses of \$5270.90.

While we have reviewed all of the issues raised by Quality Body in light of the record, it is clear that there is material evidence from which the jury could find that the shop foreman misrepresented Quality Body's experience with an ability to repair this make and model automobile. Moreover, no assault is made as to the \$9500 damage figure claimed by Ms. Newsome, nor as to the \$5200 incurred as litigation expense. This being true, practically all of the issues raised do not warrant attention in this Court.

We would, however, specifically address a few of the issues. Issue XII contends that under T.C.A. 47-18-109(e)(1), it was the Judge's responsibility, not the jury's, to assess attorney fees and litigation costs. Quality Body is correct that this is the rule found in the Code Section. In Holmes v. Foster Pontiac, GMC, Inc., the Western Section of this Court, in an unreported opinion filed on May 10, 1989, under similar circumstances remanded the case to the trial court for a determination as to such an award.

We believe, however, in the interest of judicial economy and under the facts of this case, the Trial Judge's approval of the verdict evidences the fact that he is satisfied with the verdict and is, arguably, equivalent to his making a similar award. Moreover, and most importantly, unlike the facts in Holmes, there is no real dispute as to the \$5200 figure claimed.

Under issue XIV, Quality Body complains of the Trial Judge charging the jury that Quality Body could be liable for misrepresentations during the course of the repairs, insisting that liability could only attach as a result of any initial misrepresentation. While we are inclined to believe that under certain circumstances a misrepresentation during the course of repair could give rise to a cause of action under the Consumer Protection Act, we do not find that issue germane in this case in

that we find the proof as to the initial misrepresentation and the damages flowing therefrom are practically undisputed.

As to issue XX, we observe that the award of the jury of \$20,000 is in excess of that proved at trial, which, according to our calculations, would be \$9500 damage to the vehicle, plus \$5207.90 litigation expense, making a total of \$14,707.90. In light of this, we deem it appropriate to suggest a remittitur to the \$20,000 verdict, which would reduce it to \$14,707.90, making the total judgment \$24,707.90. If the remittitur herein suggested is not accepted by Ms. Newsome within 30 days of the entry of the mandate below, a new trial will be granted, both as to the \$20,000 awarded by the jury and the \$10,000 awarded by the Trial Court.

In summary as to the other issues raised but not specifically addressed, we find that either the issues raised are without merit, or any errors asserted, under the facts developed, are harmless.

For the foregoing reasons the judgment of the Trial Court, as remitted, is affirmed and the cause remanded to the Trial Court for collection of costs below. Costs of appeal are adjudged one-fourth against Ms. Newsome and three-fourths against Quality Body.

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Houston M. Goddard, P.J.

CONCUR:

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Herschel P. Franks, J.

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Don T. McMurray, J.