

Qatar - Defects Liability: Manufacturer's Warranties and Prescription Periods

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Background to the Case

In autumn 2004, the Plaintiff was driving along Doha's Salwa Road in a 4x4 vehicle manufactured by a large multi-national car company and purchased from a local dealership in Qatar. Whilst passing over a speed bump, the vehicle's rear axle broke, causing the vehicle to overturn. The Plaintiff's wife and daughter, who had been passengers in the vehicle at the time of the accident, died at the scene.

The Case at First Instance

The Plaintiff filed a civil case with the Court of First Instance ('CFI') in Qatar in October 2005, naming the vehicle's foreign manufacturer and the local distributor as Co-Defendants to the action. The Plaintiff's claim sought compensation in the amount of \$25 million for all damage arising as a result of the accident, which it was alleged was caused by a defect in the vehicle's rear axle.

The CFI refused to hear the Plaintiff's claim on the basis that the prescription period set out in Article 266 of the previous iteration of Qatar's Civil Code (Law No. 16 of 1971) applied and the Plaintiff had not filed his claim timely in accordance with that Law. Article 266(1) states that, in the absence of a contrary agreement between the parties, the right to claim on foot of a guarantee in relation to defects shall lapse upon the expiration of one year from the date of delivery of the product to the purchaser, irrespective of whether the defect was latent and was not apparent to, or discovered by, the purchaser until a later date. However, Article 266(2) sets out an exception whereby the aforementioned prescription period shall not apply if it can be established that the seller intended deliberately and deceitfully to conceal the defect.

[Although the 1971 Law has since been replaced by a new Civil Code (Law No. 22 of 2004), its provisions nonetheless continue to have application in respect of rights and obligations arising prior to the enactment of the new Law. In any event, the provisions of Article 266 are quoted verbatim in Article 462 of the new Civil Code.]

Ruling of the Court of Appeal

In 2006, the Plaintiff appealed the decision of the Court of First Instance to the Court of Appeal. The appellate court ordered the preparation of an expert report but nonetheless, in a judgment delivered in March 2011, affirmed the finding of the lower court that the Plaintiff's claim was time-barred.

Judgment of the Court of Cassation

In May 2011, the Plaintiff lodged a further appeal with the Court of Cassation.

The Plaintiff's Arguments

The Plaintiff sought to evade the application of the prescription period on two fronts:

(i) The Plaintiff contended that his right to be awarded the compensation sought had resulted from a fault in the manufacturing of the vehicle so fundamental that its deliberate concealment and/or the failure to disclose its existence to the Plaintiff at the time of purchasing the vehicle amounted to fraud; thus coming within the exception set out at Article 266(2).

(ii) In the alternative, the Plaintiff argued that the liability of the Co-Defendants was tortious, rather than contractual in nature, and therefore, the prescription period did not apply.

The Court's Decision

The Court decided that the Plaintiff was entitled to have his claim heard and that Article 266(1)'s time-bar provision did not apply in the circumstances. In so ruling, the Court made the following observations in relation to the nature of the relationship between the parties and the nature of the liability in this case:

(i) The Contractual Link

The Court opined that passenger vehicles are sold subject to an implied warranty as to merchantable quality – that is, that they are free from manufacturing defects – and this guarantee creates a direct contractual nexus between the manufacturer and the initial purchaser, in this case the local distributor. The Court went further in stating that this guarantee passes by assignation and inures to the benefit of any subsequent owners, such as the Plaintiff. Thus, the Court found that the link between the parties in this case was contractual and not tortious; the Plaintiff's privity of contract with the manufacturer, and his resultant right to pursue a claim in relation to the defect against the manufacturer directly, derived from the manufacturer's guarantee to the distributor in respect of manufacturing defects, which was passed on to the Plaintiff by virtue of the contract he had entered into with the local distributor.

(ii) The Presence of Fraud

The Court had reference to an expert report which found that a manufacturing defect caused the rear axel in the Plaintiff's vehicle to break and that this defect could not have been discovered by the Plaintiff but for the occurrence of the accident. It was the opinion of the Court that vehicle manufacturers have a responsibility to perform the industry-standard quality control checks on each vehicle prior to releasing it for sale. The Court held that if component part of the vehicle which is critical to its structural and mechanical soundness, such as an axel, fails during its operation, serious defects must have existed at the manufacturing stage; and the failure to discover, or concealment of, such defects amounts to fraud sufficient to negate the prescription period set out in Article 266(1).

The Court of Cassation overturned the judgment of the Court of Appeal and remitted the case to the lower court for fresh determination by a newly-convened three-Judge panel.

Comment

This case imposes significant obligations on vehicle manufacturers to conduct thorough investigations of vehicles and their components prior to their entry into the marketplace, as any significant misstep in the discovery and/or disclosure of defects may be considered fraudulent and may prevent a manufacturer from relying on the prescription period now enshrined at Article 462 of the Civil Code 2004.

Please note:

Al Tamimi & Company did not provide legal representation to any of the parties to this litigation.