

BETWEEN

BX
APPLICANT

AND

ABC LIMITED
APPLICANT'S INSURER

AND

YC
RESPONDENT

Date of Order:

3 March 2014

Referee:

Referee Reuvecamp

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the respondent YC pay the applicant's insurer ABC Limited the amount of \$15,000.00 on or before 31 March 2014 or as otherwise agreed in writing between the parties.

Material Facts

[1] BX claims that on 7 June 2013 he was riding his motorbike on B Ave and entering the crossing with D Street, Z on his left. He intended to continue on B Ave. The relevant intersection is a T-intersection and YC's car was on D Street. He intended to turn right into B Ave. D Street is subject to a stop sign. BX claims that the traffic was busy and that two cars ahead of him indicated that they tended to turn left and moved towards the kerb to do so. He overtook those cars at their right side and when he reached the middle of the intersection YC turned right into his path and collided with the left side of his motorbike throwing it out of its path thereby causing considerable damage to it and BX's clothing. The motorbike was written off. The total loss suffered by BX exceeds \$15,000.00 and he reduces his claim to that amount to remain within the Tribunal's jurisdiction.

Law

[2] Law of Negligence and Land Transport (Road User) Rule 2004

Issue

[3] Whether one or both of the drivers failed to take reasonable care not to cause foreseeable damage or injury to another person or its property.

Findings

[4] YC claims that his view of traffic following the left turning vehicles ahead of BX was blocked by those vehicles and that he did not see him approaching. He claims that BX was using the median strip to overtake the left turning vehicles at the right on the intersection and that this is an unauthorised use of the median strip. BX denies that except that following the collision he was thrown onto and off the flush median. He claims that YC is liable as he was turning onto B Ave from behind a stop sign and failed to give way to him coming from his right on that road.

[5] I have carefully considered this matter and the relevant road rules and find as follows.

[6] Driving on the road gives rise to a statutory duty of care. The Land Transport (Road User) Rule 2004 sets out the requirements for the safe and efficient use of our roads and includes the Land Transport (Road User) Amendment Rule 2009. The Road User Rule sets out requirements for the safe and efficient use of roads by road users.

[7] Section 8 of the Land Transport Act 1998 states “A person may not drive a vehicle, or cause a vehicle to be driven, carelessly or without reasonable consideration for other persons.” The standard of care is that of a reasonable and prudent driver.

Road User Rule 4.1 states:

Giving way where vehicles are controlled by stop sign or give-way sign

- (1) A driver approaching or entering an intersection on a roadway where the vehicles that are moving in the direction in which that driver is travelling are controlled by a stop sign at or near the intersection must—
 - (a) stop his or her vehicle before entering the path of any possible vehicle flow at such a position as to be able to ascertain whether the way is clear for the driver to proceed; and
 - (b) give way to any vehicles approaching or crossing the intersection from a roadway not controlled by a stop sign.
- (2) A driver approaching or entering an intersection on a roadway where the vehicles moving in the direction in which the driver is travelling are controlled by a give-way sign at or near the intersection must give way to any vehicles approaching or crossing the intersection from a roadway not controlled by either a stop sign or a give-way sign.
- (3) A driver approaching a section of road suitable for travel in only 1 direction and controlled by a one-way give-way sign at or near the section must give way to vehicles on or approaching the section.

Rule 2.7 states: When passing on the right:

A driver must not pass or attempt to pass on the right of another vehicle moving in the same direction when—

- (a) approaching or crossing an intersection unless—
 - (i) the roadway is marked in lanes and the driver can make the movement without the driver's vehicle encroaching on a lane available for opposing traffic; or
 - (ii) in any other case, the driver can make the movement with safety and with due consideration for users of the intersecting road; or
- (b) approaching or passing a flush median, unless the driver—

- (i) intends to turn right from the road marked with the flush median into another road or vehicle entrance; or
- (ii) has turned right onto the road marked with the flush median; or
- (iii) can make the entire movement without encroaching on the flush median.

[8] It is true that a driver must not use the flush median to simply overtake other vehicles. This restriction is modified in two instances. He may overtake other vehicles if he intends to turn right from the road marked with the flush median into another road or vehicle entrance, provided there is no break in the flush median before the point that she intends to turn from, for instance to turn into an intermediate road or drive way on the right. No evidence was given that this situation applied.

[9] Further, in a different scenario, a driver may use a flush median to pass on the right of another vehicle moving in the same direction if he has turned right onto the road marked with the flush median and is intending to merge with traffic on that road travelling in the same direction. That was not the case here either. On the face of it, if BX was on the flush median, he would therefore have been in breach of Rule 2.7. as determined in *Netzler v Economy Taxi Ltd* [2006]DCR 185..

[10] However, to determine whether reasonable care is taken, the predominant obligation is laid down in section 8 of the Land Transport Act referred to above as is also consistent with the general principle underlying the law of negligence. To establish whether there is a lack of reasonable care in any particular case there are various factors to be taken into account, including the circumstances at the time and location of the accident, the distance travelled, the traffic volume on the day and the test of what a reasonable and prudent driver would do in the circumstances.

[11] I find that in the matter before me YC stopped for the stop sign on D Street but says that he did not see BX approaching from his right because the two left turning vehicles obscured his view. He then turned right.

[12] I have not been provided with any evidence supporting YC's claim that BX was on the flush median. His motor vehicle is less wide than cars and therefore there was no obvious need for him to move onto the flush median. Even if he was on that median strip when he was hit on the left side of the bike, and therefore technically would have been in breach of Rule 2.7(b) by, at least partly, driving over the flush median, I find that on an on-going road which has the right of way, the simple fact of a partial encroachment on the flush

median if the traffic flow requires this, and provided no danger is created for other traffic on that road, is not likely to show an absence of reasonable care to any material degree, although it may constitute a technical breach of the rule and therefore result in an infringement notice being issued to the driver.

[13] The test to be applied by me is whether one or both drivers failed to exercise reasonable care and in omitting to do so caused or contributed to the damage to property that followed. I find that even if BX did (partly) encroach on the flush median, this did not cause the accident. The cause of the accident was that YC placed his vehicle in the path of BX's motorbike when he drove onto the intersection to make his right turn. I find that YC failed to take reasonable care to ascertain whether any other vehicle was approaching from his right when he made his right turn thereby crossing BX's path. I find that it is not enough to simply assume that the reasonably wide lane and the flush median will be clear even if there are vehicles moving towards the curb to turn left on the road he was about to enter. I find that if he was not able to see that the road is clear then the proposed right turn manoeuvre clearly should not be attempted and he should have waited until it could be done safely.

[14] I find that BX is therefore entitled to be compensated for the loss suffered by him and YC is liable to indemnify BX's insurer for the cost incurred by it in compensating BX to the extent the claim falls within the Tribunal's jurisdiction. That is currently \$15,000.00. The pre-accident value of the vehicle was established at \$22,000.00. After deduction of the wreck value of \$8,800.00 the loss is \$13,200.00. Damage to clothing exceeds the remaining \$1,800.00. The maximum of \$15,000.00 is therefore reached and must be awarded.

[15] YC has requested an instalment arrangement in view of his current financial position. The insurer indicated that it was prepared to come to an equitable instalment arrangement on evidence of income and outgoings showing grounds for such an instalment arrangement.