

BETWEEN

ABQ

APPLICANT

AND

ABR Ltd

APPLICANT'S INSURER

AND

ZYO Ltd

RESPONDENT

Date of Order:

5 June 2013

Referee:

Referee Lang

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] On 25 November 2012, ABQ had parked his car on the side of the road. The driver of a campervan, [registration number], reversed into ABQ's car damaging the right front guard and driver's door. The campervan is owned by ZYO Ltd. "[ZYO Ltd's trading name]" was sign written in several places on the campervan.

[2] ABQ and his insurer, ABR Ltd, are claiming \$4,229.50 from ZYO Ltd, that being the cost of repairing the damage to ABQ's car.

Issues

[3] The main issue I have to decide is whether ZYO Ltd has any liability for the cost of repairing the damage caused by the driver of the campervan to ABQ's car.

Decision

Is ZYO Ltd liable for the repair costs to ABQ's car?

[4] The Tribunal has jurisdiction to hear claims based in contract and in tort. A tort is a civil wrong. Claims in tort can be heard by the Tribunal in respect of the destruction, loss, damage to or recovery of property. Negligence is the relevant tort relating to this claim. Negligence concerns the duties that a person owes another to take care. A driver is negligent if they breach a duty they owe to another driver and cause damage as a result.

[5] In determining this claim, I have considered whether ZYO Ltd is liable to ABQ/ABR Ltd for the repair costs to ABQ's car in contract and/or in negligence.

Claim in contract

[6] ABR Ltd says it understood that ZYO Ltd traded under the name “[trading name]”. ABR Ltd says that the driver of the campervan hired the campervan from HJ Ltd. It says the agreement with HJ Ltd included insurance cover for the duration of the hire. It says that the insurance cover would apply to the collision that occurred between the hirer and ABQ. On that basis, ABR Ltd says that HJ Ltd is liable to pay for the damage to ABQ’s car as a result.

[7] ZYO Ltd says that it did not hire the campervan to the driver. It says that ZYO Ltd leases the campervans to HJ Ltd who hires the campervans out. In any event, ZYO Ltd says it has no contractual relationship with the driver/hirer and that if there was any insurance taken out by the driver as part of the hire agreement then that would have been through HJ Ltd.

[8] I find that there is no contractual association between ABQ/ABR Ltd and ZYO Ltd. The insurance contract, if there is one, is between the driver/hirer of the campervan and HJ Ltd. Therefore, ABR Ltd’s claim cannot succeed on a contractual basis. That is, to succeed in contract the parties to the claim need to have privity of contract as a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. That is, only parties to contracts are able to sue to enforce their rights or claim damages.

[9] Therefore, I find that ABR Ltd has not proven that it has a claim against ZYO Ltd based in contract.

Claim in negligence

[10] ZYO Ltd says that the driver was not an agent of ZYO Ltd. It says that the driver/hirer(s) hired the campervan to use for their own purposes and to drive where they determined in New Zealand. ZYO Ltd says that it is not vicariously liable for the actions of the driver/hirer.

[11] For a claim in negligence to succeed, ZYO Ltd must owe a duty of care to ABQ as the driver of the other vehicle involved in the collision. In this instance, the driver of the campervan owed a duty to ABQ not to reverse into his car. ZYO Ltd, as the owner of the campervan, was not responsible for the driving and/or control of the campervan. For that to

be the case there would need to be a relationship between ZYO Ltd and the driver/hirer, whereby ZYO Ltd was seen to be in “control” of the acts or omissions of the driver/hirer. That is, such as between an employer and employee. ZYO Ltd would then be seen to be vicariously liable.

[12] Therefore, I find that ZYO Ltd is not liable in negligence to ABQ.

Conclusion

[13] ZYO Ltd has no legal liability or responsibility under either contract or negligence to ABQ or his insurer, ABR Ltd, in this matter. Accordingly, the claim is dismissed.