

BETWEEN

ABZ

APPLICANT

ACA Ltd

APPLICANT'S INSURER

AND

ZYE

RESPONDENT

AND

ZYD Ltd

RESPONDENT'S INSURER

Date of Order:

25 March 2013

Referee:

Referee Langton

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZYE is to pay ACA Ltd (the Applicant's insurer) the sum of \$1,307.26 on or before 5 pm on 5 April 2013.

Facts

[1] On 30 May 2012, ABZ's daughter had parked ABZ's car outside a friend's house in front of the garage. While it was parked, it was impacted by ZYE while she was reversing.

[2] ABZ and her insurer, ACA Ltd, claim \$1,307.26 being the assessed cost of repairs.

[3] ZYE accepts liability for the impact and ZYD Ltd (the Respondent's insurer) accepts the assessment as fair for the damage incurred in the 30 May incident. However, ZYD Ltd disputes they should pay this amount because ABZ's vehicle impacted a median barrier before repairs had been done. The damage sustained in this second impact was on the same left front corner and extended beyond the indentation made in the first impact in all directions.

Issue

[4] The issue for consideration is whether ABZ and her insurer, ACA Ltd, have a right to receive \$1,307.26, assessed repair costs, for the first event.

Law

[5] The relevant law is the law of tort in the area of negligence. There is no dispute regarding liability for the first event; therefore, the road rules based on the Land Transport 1998 and the Land Transport (Road User) Rule 2004 do not need to be considered.

Decision

[6] The Tribunal has carefully considered the argument of ZYD Ltd that, because the second damage encompassed the first damage, ACA Ltd has not incurred a loss. This is because the whole area had to be repaired due to the damage caused in the second event.

However, the Tribunal finds that the Respondent is liable to pay the amount claimed for the following reasons.

[7] When the Applicant driver hit the median barrier in the second incident, they damaged an already damaged car. The events were separate and distinct, and repair costs of the first damage were established via an assessment.

[8] *Laws of New Zealand Tort* (online ed) at [34] provides the following guidance in situations where multiple tortfeasors cause consecutive damage:

If each of several persons commits an independent tort consecutively against the same person, each is liable for the damage caused by the tortious act, assuming the damage caused by each tort to be distinct. Thus, if the second tortfeasor's act caused no further damage or merely duplicated damage caused by the first tort, the second tortfeasor will not be liable; but if the second act aggravated the damage caused by the first, each tortfeasor will be liable only in respect of that part of the damage which his or her tort caused, assuming that it is possible to separate and quantify the aggravation of damage.

[9] Although in this claim the Respondent is the only relevant tortfeasor (because ABZ or her driver caused the second event), this is not material to applying this guidance to this case – it could have been caused by a second tortfeasor.

[10] *Performance Cars Ltd v Abraham* [1962] 1 QB 33 provides case law authority for the rule that a second tortfeasor will not be liable if their actions caused no further damage or merely duplicated existing damage. In this case the defendant caused damage to the plaintiff's car and acknowledged they were responsible and agreed to pay for repair (that is, re-spraying) costs. It was then discovered in that case that the plaintiff's car had been in an earlier accident and that damage had not been repaired. Although the plaintiff had obtained judgment for the cost of repairs for the earlier damage it had not been paid. The plaintiff then claimed for the re-spraying costs from the defendant. Lord Evershed held in *Performance Cars* that:

The necessity for respraying was not the result of the defendant's wrongdoing because that necessity already existed... [T]he defendant should be taken to have injured a motor-car that was already in certain respects... injured; with the result that to the extent of that need or injury the damage did not flow from the defendant's wrongdoing.

[11] Although *Performance Cars* involves the party who caused the second damage, it is comparable and relevant because it involves duplicate damage sustained in multiple incidents at distinct times and involving different parties.

[12] The costs to repair the damage caused in the first incident in this Tribunal claim was established.

Conclusion

[13] In conclusion, the Tribunal finds ZYE liable to pay \$1,307.26 to ACA Ltd. The Tribunal accepts that these costs will be paid in full or in part by ZYD Ltd under ZYE's insurance policy.