

BETWEEN

ACR

APPLICANT

AND

ZXL

FIRST RESPONDENT

AND

ZXK

SECOND RESPONDENT

Date of Order:

2 August 2013

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the First Respondent, ZXL, is to pay the sum of \$3,979.38 (being 40 per cent of \$9,948.45 and being all insured loss) directly to BW Insurance Ltd within ten days of the date of this order; and that the Second Respondent, ZXX, is to pay the sum of \$5,969.07 (being 60 per cent of \$9,948.45 and being all insured loss) directly to BW Insurance Ltd within ten days of the date of this order.

Facts

[1] The parties to the claim were involved in a multiple nose-to-tail collision. ACR was third in a queue of six vehicles. The first slowed to turn into a driveway, the second came to an abrupt stop safely behind it. ACR came to an abrupt stop safely behind the second vehicle and the car behind him, driven by LF, came to a complete stop also without impact. The next vehicle, driven by ZXX, hit LF's vehicle from behind, pushing him forward into ACR's vehicle, which in turn was shunted forward into the second vehicle. The last vehicle, driven by ZXL, then impacted ZXX's vehicle from behind. ZXX, LF and ACR all report a second impact to their respective vehicles resulting from ZXL's impact, but ZXL denies liability for any impact but that with ZXX.

Issues

- [4] The issues to be decided are as follows:
- (i) Is ZXX liable in negligence for damage to ACR's vehicle?
 - (ii) Is ZXL liable in negligence for damage to ACR's vehicle?
 - (iii) What proportion of loss is likely to have been caused by ZXX's impact and what proportion by ZXL's impact?
 - (iv) What is the loss suffered by ACR's insurer?

Decision

Is ZXX liable in negligence for damage to ACR's vehicle?

[5] I find that ZXX negligently caused damage to ACR's vehicle when he failed to stop in time and hit LF's vehicle from behind, pushing it forwards into ACR's vehicle.

Is ZXL liable in negligence for damage to ACR's vehicle?

[6] I find that ZXL has some liability in negligence for damage to ACR's vehicle. I note that ZXL does not accept that his impact with ZXX's vehicle resulted in ZXX's vehicle being pushed forward into the next vehicle, let alone that vehicle into ACR's vehicle. However, in making the finding that there was an ongoing chain of collisions resulting from ZXL's failure to stop in time, I rely in particular on ACR's and LF's clear statements that they felt two significant impacts, some seconds apart. They are in a much better position than either of the rear drivers to know whether or not there were one or two impacts to their vehicles.

What proportion of loss is likely to have been caused by ZXX's impact and what proportion by ZXL's impact?

[7] In making this finding, I acknowledge the subjectivity of this type of assessment. I have weighed the various drivers' and witnesses' statements with regards to their perceptions of the relative force of each impact, as well as considered the extent and cost of damage where damage could only be attributed to one of the impacts.

[8] ZXX and his witness (who was a passenger in his vehicle) say that their vehicle's impact with LF was very minor, whereas the impact from behind by ZXL was very strong. LF, by telephone as a witness, says that the second impact (ZXL's) was much stronger than the first although the first impact (by ZXX) was still strong enough to push his vehicle (with the brake on) forward into ACR's vehicle.

[9] ACR says that the two impacts felt similarly forceful to him, and that both were strong enough to push his vehicle into the one in front and give him whiplash.

[10] I have given most weight to ACR's perception of force as it is the damage to his vehicle that is under consideration and he is the only party with the direct experience of the

force on his vehicle. I also note that, of all the parties and the witnesses, he has the least interest in the respective liability of the two respondents because he was fully insured and therefore has no financial interest in the outcome.

[11] With respect to damage, it is significant that the damage to the rear of Z XK's vehicle (the damage caused solely by Z XL) was assessed at \$7,578.50. This is not indicative of a minor impact. If Z XL's impact on Z XK's vehicle was this strong, and ACR perceived the impact on his vehicle to be equally strong after both impacts, then I do not accept that Z XL's impact on LF's vehicle was only minor.

[12] It does follow, though, that Z XL's direct impact on Z XK was harder than Z XK's direct impact on LF's, because they felt similar once the effects 'arrived' on ACR's vehicle, even though Z XL's impact had been referred (and therefore some force absorbed) through one more vehicle than Z XK's impact.

[13] Even though I have accepted that the force resulting from each impact on ACR's vehicle was similar, to apportion the damage to each respondent at 50-50 would be failing to recognise that the first impact was to an undamaged vehicle and the second impact was in effect 'on top of' existing damage caused by Z XK's negligence. I have therefore set Z XL's liability at less than half, but as high as 40 per cent because the force of the impact resulting from his collision with Z XK was hard enough to be likely to have caused further damage and contributed significantly to the total costs of repair. Accordingly Z XK's liability is set at 60 per cent.

What is the loss suffered by ACR's insurer?

[14] I accept that the vehicle was a total loss and that the costs claimed result from the sale of the wreck, which are significantly lower than the assessed repair costs. Neither respondent disputed the quantum and the loss is accepted as \$9,948.45.