

BETWEEN

ACV

APPLICANT

AND

ZXE Ltd

RESPONDENT

Date of Order: 26 August 2013

Referee: Referee Brown

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] ACV engaged ZXE Ltd to move his household belongings including his Ducati motorbike. When the truck was unpacked at his new home, the fairing, right hand mirror and both back blinkers were damaged.

[2] ACV claims \$1,393.35 to repair the damage.

Issues

[3] The issues to decide are whether ZXE Ltd intentionally damaged the bike and whether the costs claimed are reasonable.

Decision

Did ZXE Ltd intentionally damage the bike?

[4] There was a written contract signed by the parties. This contract is covered by the Carriage of Goods Act 1979 (CGA). The CGA applies to all domestic carriage of goods within New Zealand, whether goods are carried by road, rail, sea or air. The CGA provides for four different categories of contracts, and the extent of an individual carrier's responsibility for damage to goods depends upon which kind of contract governs the particular case. In this case the contract was "at owner's risk", which means that the carrier is not liable for any loss or damage to the goods unless he or she has intentionally damaged them.

[5] ACV states that ZXE Ltd is responsible for the damage because he believes that the packers forced the last items into the truck and this resulted in damage to his bike.

[6] RK, the director of AXE Ltd, says that he is very sorry about the damage; however, he says it did not occur intentionally. The truck driver OA gave evidence

that he did not force anything into the truck. He states that he packed the truck in the normal manner. He put the bike up against the wall and tied it up. Then he packed it with blankets and put boxes and a dining table next to it. When he unpacked the truck at the end of the journey he noticed the damage. He doesn't know what caused the damage.

[7] While I understand that ACV is very disappointed that his bike was damaged in the truck, I am unable to make a finding that ZXE Ltd intentionally damaged it. No one saw the damage happen. I am not persuaded that the goods were forced into the truck. There is no independent evidence to support this view.

[8] In addition, there is no evidence to suggest that OA applied force to the bike by throwing anything at it or dropping anything on it in the truck. It is more likely that the damage was accidental and occurred due to the movement of the truck.

[9] Therefore, I find that ZXE Ltd did not intentionally damage the bike and they do not have to pay for the damage. The claim is dismissed.