

BETWEEN

ADD

APPLICANT

AND

HU Insurance Ltd

APPLICANT'S INSURER

AND

ZWX

RESPONDENT

Date of Order:

15 May 2013

Referee:

Referee Avia

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZWX is to pay HU Insurance Ltd \$2,280.43 on or before Wednesday 5 June 2013.

Facts

[1] On 28 February 2012 at about 7.20pm, the two parties had a collision at an intersection in Auckland. ADD, driving WD's car, was travelling along [road A]. ZWX was turning right from [road B] into [road A]. It was dark at the time of the collision.

[2] The intersection is governed by a give way sign on [road B]. Leading into the intersection with [road B], [road A] briefly forms two lanes: one for vehicles turning right into [road B] and another for vehicles travelling straight ahead. Although the turning lane on [road A] is marked, it is not governed by a give way or stop sign.

[3] WD and HU Insurance Ltd claim repair costs of \$2,280.43 from ZWX.

Law

[4] The issues to determine are:

- (i) Did ADD accept liability for the collision?
- (ii) Did ZWX fail to give way when turning right?
- (iii) Are the repair costs claimed, reasonable?

Decision

Did ADD accept liability for the collision?

[5] ZWX says that ADD accepted liability for the collision. The only evidence I have is the word of one party against that of the other. Without other evidence, I find ZWX's submission not proved. Further, I find it less likely that ADD admitted liability and more likely he told ZWX that he would contact his insurance company about the collision.

Did ZWX fail to give way when turning right?

[6] A motorist who collides with another may be found careless or negligent for breaching his or her duty to drive carefully. When determining whether ZWX failed to give way when turning right, I must consider the relevant road rules. When turning right from an intersection controlled by a give way sign, ZWX is obliged to give way to any traffic travelling straight ahead (rule 4.2(1), Land Transport (Road User) Rule 2004 (LTR)) and to any traffic turning from a roadway not controlled by a stop or give way sign (rule 4.1(2), LTR).

[7] I find that by turning right from a give way sign in front of a car on [road A], ZWX breached rule 4.2(1).

[8] ZWX says that ADD travelled in a stop-start fashion along [road A]. The only evidence I have is the word of one party against that of the other. Without other evidence, I find ZWX's submission not proved. When asked about this point, JT, ZWX's witness, could only say she thought ADD was travelling in this fashion. Her hesitant response and the words "I think he was" demonstrated she was not certain about this. Therefore, I did not find her evidence helpful on this point.

[9] In any event, if ADD had been travelling along [road A] in a stop-start fashion, he was still travelling along the road. In these circumstances, I would not have found him liable for the collision in those circumstances as ZWX should have waited until ADD had driven past the intersection before turning.

[10] ZWX says ADD was turning right because he stopped in the right hand lane. I do not find this contention proved. I prefer ADD's evidence on this point, as he rather than ZWX knows what he intended to do at the time. I give JT's evidence little weight on this point. This is because I consider what she could see of ADD's actions just prior to the collision was probably restricted given it was dark and she was two cars behind ZWX.

[11] In any event if ZWX had proved ADD had been turning right, she would still have been negligent because she should have given way to a right turning car whose turn was not controlled by a give way or stop sign.

[12] ZWX also said ADD had allowed her to turn in front of him. ZWX had no grounds for assuming or implying this from ADD's actions. Rather, ZWX should have waited for an explicit sign from ADD that he was, in fact, giving way to her. Further, it is difficult to understand how ADD might have communicated such a message as it was dark and ZWX could not see ADD's face.

[13] ZWX asked how long she should wait in these circumstances before turning. If ADD was driving in the erratic manner she describes, then ZWX should have been even more careful to ascertain exactly what ADD was doing before she decided to turn. In these circumstances, I find the prudent motorist should wait for as long as it takes to ascertain the intentions of the other vehicle.

[14] In light of the above, I find ZWX's failure to give way when turning right was negligent and caused the collision.

Are the repair costs claimed reasonable?

[15] As the liable party, ZWX must compensate WD and HU Insurance Ltd by paying for the reasonable repair costs. The repairs claimed are consistent with the description of the collision as the right side of the car was damaged. I find the costs claimed to be reasonable as an assessor assessed the cost of the damage. Therefore, ZWX must pay the sum ordered.

[16] If ZWX is unable to pay the full sum ordered within the stated time frame, she may wish to approach HU Insurance Ltd to discuss alternative payment options.

Other matters

[17] ADD questioned the veracity of the witness's medical condition and her presence at the collision. To make a finding that JT faked her injury or was not at the collision requires me to find that she was not telling the truth. That is a serious allegation. Such a serious allegation requires proof rather than mere suspicion. No such proof was given. For this reason, I accept that JT had a back injury preventing her from attending the previous hearing and that she was present at the time of the collision.

[18] ZWX asked about the repairs to her car. As I have found her liable for the collision, the repairs to her car are also her responsibility.