

BETWEEN

ADT

APPLICANT

AND

CR Insurance Ltd

APPLICANT'S INSURER

AND

ZWH

RESPONDENT

Date of Order:

9 May 2013

Referee:

Referee Tunnicliffe

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZWH is to pay \$4084.71 to CR Insurance Ltd on or before 20 May 2013.

Facts

[1] On 18 December 2012, ADT was travelling up [road A] away from the town centre. ZWH was travelling down [road B]. [Road B] has a give way at the intersection with [road A]. ZWH drove through the give way and across [road A] because, he says, his brakes failed. ADT's vehicle collided with the left rear side of ZWH's vehicle. ZWT considers ADT was at fault because he ought to have been able to stop but was travelling too fast.

[2] ADT and CR Insurance Ltd claim the cost of repairing ADT's vehicle (\$3817.91) plus the tow cost of \$266.80.

Issues

[3] The issues for the Tribunal to determine are:

- (i) Whether ZWH was negligent and caused the damage;
- (ii) Whether there is any contributory negligence on the part of ADT, and
- (iii) If ZWH is found liable, whether the costs claimed are reasonable.

Decision

Was ZWH negligent?

[4] ZWH is required to ensure the way is clear before proceeding through the give way onto [road A].

[5] ZWH says he started braking about 200 metres before the intersection but his foot went to the floor. He tried the handbrake but the car started to slide. He then used the gears to slow down but was unable to stop before the intersection with [road A]. ZWH says that a

person possibly called TS from a service station tested the brake fluid in ZWH's vehicle and found it to be contaminated. ZWH has lost the report from the service station.

[6] I am not able to accept ZWH's evidence that the brakes on his vehicle failed because there is no evidence from an appropriate tradesperson that the brakes have been tested and found faulty. ZWH may have been incapacitated for a period of time because of an operation, but I cannot accept that prevented him from phoning the service station to request another copy.

[7] I find that ZWH was negligent because he failed to give way.

Was ADT negligent?

[8] ADT had a responsibility to drive to the speed limit of 50 km/hr and drive at a lesser speed if the conditions warranted.

[9] ZWH claims that he managed to stop his vehicle when it was across the left hand lane of [road A]. ZWH says he had sufficient time to look to his left and make eye contact with ADT, to put the car in first gear and drop the clutch, then change to second gear because his car was only spinning the wheels and not moving before being hit by ADT. ZWH claims that if ADT had been driving at 50 km/hr or less, he would have been able to stop. ZWH said that ADT had come round a blind corner and ought to have been travelling slower.

[10] On the other hand, ADT says he was travelling at around 40km/hr. As he approached the intersection, there was a white blur as ZWH's vehicle appeared in front of him from [road B] on the right. ADT denies making eye contact with ZWH and denies that ZWH's vehicle had stopped in the left hand lane of [road A].

[11] Subsequent to the hearing, I went to inspect the intersection.

[12] I prefer ADT's version of events. A person driving up [road A] has reasonable visibility approaching the intersection with [road B], despite the bend in [road A]. Had ZWH

been stopped in the left hand lane of [road A], ADT would have seen him and he did not. The notes taken by Police of an interview with ZWH immediately after the collision make no mention of ZWH having indicated ADT's speed as being a factor. Nor do the notes record ZWH as having stopped or that ADT ought to have been able to stop. In addition, ZWH was given an instant fine for failing to Give Way but ADT received no sanction from Police.

[13] I find no contributory negligence on the part of ADT.

Are the costs claimed reasonable?

[14] ZWH has assisted several different panel beaters on a casual basis on and off over two to three years, disassembling vehicles. ZWH considered that the nose cut was unnecessary and that the plastic liners would not have required replacing. In addition, ZWH questioned the need to degas and regas.

[15] After considering ZWH's evidence, I have decided to accept the repair costs as being the reasonable costs of repairs. The repairs have been overseen by an insurance assessor. The combined expertise of the assessor and the repairer in my view outweighs ZWH's limited experience. ZWH would have required evidence from a panel beater of experience to challenge the applicant's evidence.

[16] The cost of towing the vehicle from the scene and to the repairer is a cost arising directly from the collision and appears reasonable.

[17] I find ZWH liable to pay both the cost of repairs and the cost of the tow as claimed to CR Insurance Ltd.