

BETWEEN

AEJ Ltd

APPLICANT

AND

AEK LTD

APPLICANT'S INSURER

AND

ZVM

RESPONDENT

Date of Order:

23 September 2013

Referee:

Referee Macpherson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZVM is to pay to HY Insurance Ltd the sum of \$7,523.01 by 5 pm on Friday, 4 October 2013.

Facts

[1] At 3 am on 1 September 2012, BQ was driving an AEJ Ltd truck for work purposes when he hit two of five cattle that had wandered onto the state highway after pushing through an unsecured boundary gate. AEJ Ltd's truck was damaged in the collision. The cattle were owned by ZVM.

[2] AEJ Ltd is insured with AEK Ltd. Their truck was repaired and repainted at a cost of \$7,523.01. In the Tribunal, AEK Ltd claims that sum from ZVM.

Issues

[3] The issue is whether ZVM is liable for the damage to the AEJ Ltd truck.

Law

[4] Section 5(1) of the Animals Law Reform Act 1989 provides that stock owners owe a duty to road users to take reasonable care to ensure that their stock does not stray onto the road. Section 5(2) provides that, in determining whether a stock owner is liable for breach of this duty, consideration is required to be given (amongst any other matters that are required or entitled to be considered of the Act) to:

- (i) The common practices for fencing in the locality of the accident;
- (ii) Any measures taken to prevent animals from straying onto the road in that locality; and
- (iii) Any measures likely to warn users of the road of the likely presence of animals on the road.

[5] I have had regard to ZVM's arguments today that the gate may have been opened by a third person who had pulled over to use their phone or for a comfort stop, as it was a

convenient spot to do so. However, there was no evidence to support any third person doing that, and as it seems ZVM was aware of this risk, further steps should have been taken by him to secure the gate by paddock or other security device. I also note that the argument raised by ZVM today is at odds with his account to the Police at the time that the cattle had got onto the road by pushing open a gate that he had not shut properly.

[6] The incident occurred on a three-lane highway. While the fences and gate described were adequate, the difficulty here is that ZVM had not secured the gate. I find that ZVM did not take reasonable care to ensure that his stock did not stray onto the road.

[7] There were no signs warning road users of stock on the road.

[8] I have had regard to ZVM's belief that the driver of the truck may have contributed to the collision by his speed but I do not find this supported on the evidence. ZVM's neighbour had parked his vehicle with lights flashing and was waving a torch. This drew the driver's attention to the Good Samaritan's actions and actually distracted him from the stock on the road.

[9] I find that BQ's driving did not contribute to the incident; despite braking and taking evasive action, he did not have a chance to avoid the cattle before impact.

[10] Where one person breaches a duty that they owe to another and causes damage to the other's property as a result, the person who has breached the duty is liable to pay the cost of putting the other person back in the position they would have been in had the damage not occurred. I have found that ZVM has breached his duty.

[11] As the innocent party, AEJ Ltd is entitled to be put back in the position that it would have been in had the damage not occurred. Repair costs were established at \$7,523.01 and are reasonable.