

BETWEEN

AEP

APPLICANT

AND

ZVG LTD

RESPONDENT

Date of Order:

28 August 2013

Referee:

Referee Edwards

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] AEP contracted ZVG Ltd to move her possessions in March 2013. The signed contract stated that the carriage was to be at “owner’s risk”.

[2] Included in the move were two glass fish tanks. AEP claims she gave the movers polystyrene to put under the tanks, and that they confirmed they would do this. However, on arrival at the destination, it was found that one of the tanks did not have polystyrene under it and that it had cracked.

[3] AEP claims for compensation under the Consumer Guarantees Act 1993.

Issues

[4] The issues to be decided are:

- (i) Whether ZVG is liable for losses under the Consumer Guarantees Act, and
- (ii) Whether ZVG Ltd is liable for losses under the Carriage of Goods Act.

Decision

Is ZVG Ltd liable for losses under the Consumer Guarantees Act?

[5] AEP claims the Consumer Guarantees Act 1993 (“CGA”) applies to this claim, based upon information she obtained from a consumer website which states the CGA applies to the service carriage companies provide. However, s 5 of the Carriage of Goods Act 1979 (“COGA”) states the COGA applies to every carriage of goods. Section 6 of COGA states that no carrier shall be liable for the loss or damage of any goods carried by them except in accordance with the terms of the contract and the provisions of the COGA, or where they intentionally caused the loss or damage.

[6] There is no evidence or suggestion that the damage to the fish tank was caused intentionally.

[7] As this claim is for compensation for accidental or negligent damage to goods under carriage, I find the CGA does not apply. Instead, ss 5 and 6 of the COGA place liability for claims for loss or damage to goods under COGA. However, the CGA may apply to other aspects of the service provided by a carrier.

Is ZVG Ltd liable for losses under the Carriage of Goods Act?

[8] Section 8 of the COGA sets out the types of carriage. Under a carriage at owner's risk, the carrier shall not be liable for any loss or damage except where it has been intentionally caused.

[9] In this case, the contract clearly states the carriage was at owner's risk. The contract was signed as required by the Act and clearly stated that no compensation would be paid for any loss or damage.

[10] In light of the above, as the contract for carriage was at owner's risk, I find ZVG Ltd not liable to pay compensation for damages under the COGA.

[11] In the event that ZVG Ltd had been liable, it should be noted that AEP did not prove her loss. In such circumstances, a person is generally entitled to compensation equivalent to the value of the property before the loss. AEP did not provide any evidence to prove the value of the tank that was damaged, nor the cost to replace one tank.

[12] In light of the above, the claim is dismissed.