

**BETWEEN**

**AFL**

APPLICANT

**AND**

**KXR Insurance Ltd**

APPLICANT'S INSURER

**AND**

**ZUK**

RESPONDENT

Date of Order:

14 January 2012

Referee:

Referee A Davidson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the Respondent, ZUK, is to pay the Applicant's insurer, KXR Ltd, \$2,490.85 (including GST) within 10 days of the date of this order.**

## **Facts**

[1] On 13 March 2012, the Applicant, AFL, was driving along [street name] in [suburb]. ZUK opened his car door as she drove past, damaging the front passenger's-side of her car.

## **Decision**

[2] I find that the above claim is governed by the tort of negligence and r 7.2(1) of the Land Transport (Road User) Rule 2004.

[3] Rule 7.2(1) of the Land Transport (Road User) Rule 2004 states:

A person must not cause a hazard to any person by opening or closing a door of a motor vehicle, or by leaving the door of a motor vehicle open.

[4] All drivers owe a duty of care to other road users to exercise due caution and care. This duty of care includes insuring that the way is clear before opening a vehicle door.

[5] I find that ZUK created a hazard by opening his door in the path of oncoming traffic, breaching both r 7.2(1) of the Land Transport (Road User) Rule 2004 and his duty of care, causing the collision.

[6] ZUK said that he looked for other cars but did not see any before opening his door. ZUK stated that the road is only just wide enough for two cars to pass each other if a car is parked on either side of the road which was the case at the time of the collision. Because of the other car trying to pass by in the other direction, ZUK argued that AFL was forced to drive too closely to his car and as such that she was partly or fully responsible for the damage to her vehicle. ZUK argued that his door was only open a little and said this was supported by the fact that his car door was pushed inwards rather than pushed around to the front of his car as it would have been had it been open wider. AFL acknowledges that she was travelling closely to ZUK's car and that his door was only open a small way.

[7] I accept that ZUK's door was only open a short way; however, the question is not whether it was open a small way or large way but, reflecting the wording of the Land Transport (Road User) Rule 2004, whether his open door created a hazard. Given the narrowness of the road, I am satisfied that opening a car door to any degree where there is a passing vehicle would create a hazard. ZUK may not have seen AFL's vehicle; however, it was obviously there to be seen as the collision happened almost immediately that he opened his door a short way. ZUK argued that AFL was driving too closely to his vehicle; however, I find that she was not negligent to drive so closely. In order for two vehicles to pass on the road in question, it is necessary for them to pass very near to the parked cars. The only alternative would be to provide that vehicles cannot pass each other along that street, which is clearly not practical. In the circumstances, vehicles must be able to pass closely by parked vehicles. AFL did not create a hazard by driving closely to ZUK's car, rather ZUK created the hazard when he opened his door in front of AFL's car.

[8] ZUK is obliged to pay reasonable costs to compensate AFL for the damage to her vehicle. KXR Insurance Ltd has provided the following evidence in relation to the damage caused by the collision and the cost to repair the damage:

- (i) Two photos showing damage to the front passenger's-side of AFL's car consistent with the description of the accident;
- (ii) A damage assessment from a KXR Insurance Ltd assessor, CP, valuing the damage to AFL's car at \$2,490.85 (including GST); and
- (iii) An invoice from the repairer, JZ, for \$2,490.85 (including GST).

[9] I accept KXR Insurance Ltd's evidence that the reasonable costs are \$2,490.85 (including GST).