

BETWEEN

AGB

APPLICANT

AND

AGC

SECOND APPLICANT

AND

WZ Insurance Ltd

APPLICANT'S INSURER

AND

ZVU

RESPONDENT

Date of Order:

1 May 2013

Referee:

Referee Kane

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZVU is to pay WZ insurance Ltd \$736.58 on or before the 17 May 2013.

Facts

[1] In June 2012, AGB was in his car driven by his daughter proceeding west from Christchurch towards [a town]. ZVU was driving his vehicle ahead of them towing a loaded trailer. There were very strong nor-west winds at the time. A piece of plywood was blown from ZVU's trailer, rose in the air and hit AGB's car doing damage to the front bumper.

[2] AGB claims ZVU was negligent in failing to secure his trailer load adequately and seeks an order to be compensated for the cost of repairs to his vehicle of \$736.58.

Issues

[3] The issues to be determined are:

- (i) Did ZVU take all reasonable and prudent precautions to ensure that his trailer load was secure?
- (ii) If so, did the failure to take care cause the damage to AGB's car?
- (iii) Were the wind conditions so severe that all reasonable and prudent precautions would not have prevented the plywood from being blown from the trailer?

Decision

Did ZVU take all reasonable and prudent precautions to ensure that his trailer load was secure?

[4] The relevant law is the law of negligence. When operating a vehicle on the road, drivers must act in accordance with a standard of care. Whether the standard has been breached is decided by asking whether in all the circumstances of the case, what should the reasonable and prudent person, in the position of the respondent, do by way of response to a reasonably foreseeable risk, and was there a failure to do this? As to what is reasonably

foreseeable, the likelihood of the damage occurring is taken into account. In other words, was the danger of sufficient magnitude to justify taking precautions to eliminate the risk?

[5] ZVU argued that he always takes the necessary precautions to secure the load on his trailer. He provided in evidence a net and a tarpaulin. He stated that he always secures a load, first with the net and then with the tarpaulin. He argues, this would have been sufficient to secure the plywood under normal conditions. However, a photograph of ZVU's trailer parked in [a town] taken just after the incident shows that the net and tarpaulin cover the trailer left to right and not forward to back. This left large gaps at the rear of the trailer from which objects could escape. ZVU said he had thought that the object had been blown out from the side of the trailer. However, he did not see this happen and AGB confirmed that the plywood had exited through a gap at the rear. Based on this evidence, I find that ZVU has not taken sufficient precautions to ensure the load was secure by leaving a gap at the rear from which the plywood escaped.

Did the failure to take care cause the damage to AGB's car?

[6] A causal link between the respondent's conduct and the claimant's loss must be demonstrated. The test employed here is whether the claimant would in fact have suffered the loss but for the respondent's action.

[7] ZVU argued that he could not see how the damage to the bumper could have been caused by a car driving over a piece of plywood on the road. This argument is based on ZVU's assumption that the plywood landed on the road before it came into contact with AGB's car. However, given he did not see what occurred I have only AGB's uncontested evidence that the plywood was blown up into the air and that his daughter applied the brakes when it appeared the wood was heading straight for the car. By braking, he believes his daughter prevented further damage to the car. I find based on AGB's evidence, that there was a direct link between the plywood escaping and the damage caused to AGB's car. As a result, there is only the cause of the escaping plywood to consider.

Were the wind conditions so severe that all reasonable and prudent precautions would not have prevented the plywood from being blown from the trailer?

[8] A defence exists to a claim of negligence if it can be proven that the cause of the damage was in fact entirely due to an extraordinary act of nature.

[9] ZVU has submitted that the wind was over 100 km/hr that day and that but for this extremely strong wind this event would not have occurred. AGB confirmed in his original statement and at the hearing that the wind was very strong that day to the point where it could be felt pushing strongly against the car while travelling along the road. I therefore accept that the wind was very strong. However, driving is about assessing risks in changing conditions. I find that ZVU had it within his control to prevent the plywood escaping as the wind increased. He stated that he was familiar with winds coming up and increasing in speed very quickly in the area. He also stated that he considered the winds sufficiently strong that day to make a stop in [a town] to check his load. Therefore, I find that ZVU ought to have been aware of or foreseen the particular risk the wind posed in the circumstances, and stopped earlier to assess his load. I find it is something that the reasonable and prudent person should have done given that ZVU had arranged the trailer with the gaps at the rear. The situation was not as ZVU originally assumed that the plywood had escaped through a side covered with the netting. Thus, I find that ZVU does not have a defence that the cause of the damage was entirely due to an extraordinary act of nature. Accordingly, he is responsible for the proven loss of AGB.

[10] ZVU does not dispute the costs of repair. I find the costs to be reasonable because they have been assessed as acceptable by an independent insurance assessor. The proven loss, for which ZVU is responsible, is therefore the claimed amount of \$736.58.