

BETWEEN

AL LTD
APPLICANT

ABC LTD
APPLICANT'S INSURER

AND

ZO
RESPONDENT

Date of Order:

30 June 2014

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed.

Facts

[1] On 22 April 2013 at about 6.15am, the applicant's driver, AA, was driving a truck south out of Z Town when he struck a cow that was standing on the State Highway. AL Ltd and its insurer, ABC Ltd claim \$15,000.00 for the cost of repairing the truck and vehicle hire costs.

[2] The cow had escaped from a paddock on property adjacent to the State Highway and belonging to ZO and her brother. The animal belonged to friends of ZO's and was one of five of their animals that had been in the paddock about 6 weeks.

Law

[3] The relevant law is s 5 of the Animals Law Reform Act 1989 which confirms that general principles of negligence apply. Under those general principles, a person in control of stock is required to take reasonable steps to prevent the stock from escaping and causing risk to passing motorists.

Issues

[4] The issues to determine are:

- Was ZO in control of the stock and therefore owing a duty of care, as a keeper of stock, to road users?
- Were reasonable steps taken to prevent the stock from escaping?

Was ZO in control of the stock and therefore owe a duty of care, as a keeper of stock, to road users?

[5] I find that ZO was not in control of the stock and therefore has no duty of care relating to them. ABC Ltd presented an investigation report commissioned by them, in which the investigator states that ZO told him that she had asked her friends, the ABC Family, to drop four of their stock onto her property so that they could graze the excess grass. The investigator states that "it was ZO's responsibility to care for those animals". It is not clear whether this latter statement was based on what she told him directly or is an assumption arrived at from the earlier statement.

[6] In any event, ZO denies that she ever made either statement to the investigator and said at the hearing that the ABC Family had recently lost their farm to a mortgagee sale and needed places to house their stock urgently. She let them have the use of the paddock on her property. I note that she does not live at the property and she says she was not looking after the animals. It makes sense to me that if they were not her animals and she was not living at the property where they were located, she is unlikely to have been looking after them.

[7] ZO had also engaged an investigation firm and their report was also available at the hearing. Her investigator interviewed BB who confirmed that she was the owner of the animals in the paddock. She stated to the investigator that she was satisfied with the fencing in the paddock.

Decision

[8] Given the confirmation of ownership of the animals contained in ZO's report, ZO's evidence that she was not looking after the animals and the lack of any established evidence to the contrary, I find no reason to take the view that ZO was in control of the stock. She therefore owes no duty of care in relation to the animals and the claim must be dismissed.

Were reasonable steps taken to prevent the stock from escaping?

[9] Given the above finding, I have not addressed this issue in any detail. I do note that the findings in the two investigation reports in relation to the adequacy of the fencing are in direct conflict.