

BETWEEN

ADZ

APPLICANT

AND

KM Insurance Ltd

APPLICANT'S INSURER

AND

ZVZ

RESPONDENT

Date of Order:

3 November 2010

Referee:

Referee A Davidson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the Respondent, ZWZ, is to pay the Applicant's insurer, KM Insurance Ltd, the sum of \$13,182.09 (incl GST) within seven days from the date of this order.

Facts

[1] On the evening of 30 October 2009, ZVZ was proceeding along [an Auckland road] when he had a diabetic hypoglycaemic episode. ZVZ was unable to control his vehicle, which drifted left and collided with the Applicant (ADZ)'s, vehicle which was parked on the side of the road.

Law

[2] I find that the above claim is governed by the tort of negligence and section 8 of the Land Transport Act 1998.

[3] Section 8 of the Land Transport Act 1998 states:

A person may not drive a vehicle, or cause a vehicle to be driven, carelessly or without reasonable consideration for other persons.

Decision

[4] All drivers owe a duty of care to other road users to drive with due consideration and care. Particular care must be exercised when a driver has a chronic medical condition such as diabetes, which requires close management to ensure the driver is able to drive safely.

[5] ZVZ acknowledges that he collided with ADZ's car but argued that he should not be responsible for the cost of the collision as he was having a diabetic hypoglycaemic episode at the time and was unable to control his actions.

[6] I accept that ZVZ was unable to control his vehicle at the time of the collision. The question in this case is whether ZVZ exercised reasonable care in preventing this episode from occurring, rather than whether ZVZ drove with reasonable care and skill.

[7] ZVZ stated that he has had this condition since 1978, a period of over 30 years. He also stated that he manages his condition through a course of tablets and an insulin injection in the morning, an insulin injection in the evening, and taking care of what and when he eats.

[8] On the day of the incident, ZVZ indicated that he had his meals and medication as usual, including dinner. He then did some exercise and that it was after this that he had the episode.

[9] ZVZ was sent to Auckland Hospital after the incident where he was seen by Dr BN. In the Hospital's Clinical Summary of ZVZ's visit Dr BN says:

He [ZVZ] had lunch at 13h00 nothing since and went to the boxing club for a workout... In my opinion ZVZ have [sic] very little insight in his condition and should not be allowed to drive if he does not [sic] understand the simple issue of fasting for 11 hours and exercising in that 11 hours and still taking his insulin.

[10] While ZVZ maintains that he did have dinner, it is clear from the hospital report that Dr BN formed a different view: that ZVZ did not have dinner and that this and the exercise brought on the episode.

[11] The Tribunal had the benefit of speaking with ZVZ's doctor during the hearing, Dr PW. Dr PW provided ZVZ with a letter substantiating his condition and also stating:

Due to fluctuations in diet and exercise and meal times he has suffered hypoglycaemic episodes where his blood sugar level has become low and he can get dizzy, and even becomes a bit confused during these episodes.

[12] Dr PW indicated that if ZVZ skipped dinner and then exercised, it was almost inevitable that he would have a diabetic hypoglycaemic episode. She also indicated that even if ZVZ did have dinner, the exercise alone may have been enough to bring on the diabetic hypoglycaemic episode.

[13] ZVZ has lived with his condition for over 30 years. The medical evidence that I have received today is that a diabetic hypoglycaemic episode was readily foreseeable in the event that ZVZ skipped dinner or undertook vigorous exercise. On the balance of probabilities, I accept Dr BN's opinion that, based on ZVZ's blood sugar levels at the time of his admission to hospital, he had skipped dinner. ZVZ disputes this point but even if ZVZ is correct the medical evidence indicates that the exercise alone, which he does not dispute, may have been enough to bring on the episode. On this basis, I find that to a diabetic of many years experience, it should have been readily foreseeable that skipping a meal and/or undertaking vigorous exercise may bring on a diabetic hypoglycaemic episode. I find that ZVZ should have reasonably appreciated the risk that such an episode presented and sought to avoid it by not driving at all, arranging for someone else to take him home, or checking his blood sugar levels before driving and taking such other medical or dietary steps to avert the episode in terms of taking medication, eating food or otherwise.

[14] Having found that ZVZ's episode was reasonably foreseeable, I find that he breached both his obligations under s 8 of the Land Transport Act 1998 and his duty of care to other drivers, and is responsible for the collision.

[15] ZVZ is obliged to pay reasonable costs to compensate ADZ for the damage to her vehicle. KM Insurance Ltd has provided the following evidence in relation to the damage caused by the collision and the cost to repair the damage:

- (i) Eight photographs showing damage to the front, rear and driver's-side of ADV's vehicle consistent with the description of the accident;
- (ii) A damage assessment from a KM Insurance Ltd assessor, ES, valuing the damage to ADZ's vehicle at \$12,975.09 (incl GST);
- (iii) An invoice from the repairer, YH Limited, for \$12,975.09 (incl GST); and
- (iv) An invoice from YH Limited for towing ADZ's vehicle of \$207.00 (incl GST).

[16] I accept KM Insurance Ltd's evidence that the reasonable costs are \$13,182.09 (incl GST).