



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1303

APPLICANT BL

RESPONDENT DQ

The Tribunal orders:

1. DQ is to pay to [Insurance company] the sum of \$1,739.24 on or before 30 November 2020.

Reasons

1. On Christmas Day 2019, BL performed a U-turn on [redacted]. DQ was reversing out of her driveway at the same time. The cars collided just past the point where DQ's driveway meets the road.
2. The damage to BL's car cost \$1,739.24 to repair. DQ's car was also damaged, but she elected not to file a claim. DQ was uninsured.
3. [Insurance company] seeks compensation from DQ for the cost of repairs to BL's car. Those costs were established.
4. The issues to resolved are: (a) Did DQ fail to keep a proper lookout when reversing? (b) If so, did BL make an unsafe lane change?

Did DQ fail to keep a proper lookout when reversing?

5. I find that DQ failed to keep a proper lookout when reversing. The collision occurred because DQ struck a car that was already on the roadway. DQ had a duty to ensure the way was clear before she entered the roadway. It was not.
6. I have had regard to DQ's evidence that she checked her mirror and over her shoulder before she reversed. I accept she did this, but a reversing driver must continue to ensure the way is clear as she rolls back. This is particularly so at the point where the car enters the road. DQ confirmed she never saw BL. A passenger in DQ's car who gave evidence also confirmed he had not seen BL. Even if BL was performing her u-turn at the same time, a prudent driver would be looking at the whole road by looking over her shoulder, to ensure there were no cars around. This is particularly so given that DQ was planning to reverse onto the other side of the road.

Did BL make an unsafe lane change?

7. A driver must not move from one lane to another without first ensuring that the manoeuvre can be safely completed.
8. DQ stated that BL ought to have seen her reversing and stopped to allow her reversing manoeuvre to be completed before completing her u-turn. DQ considers that BL was performing an unusual manoeuvre that a prudent driver would know might not be visible or expected by the reversing driver. DQ therefore considers the u-turn to have been an unsafe lane change that caused, or at least contributed to, the collision.
9. Having given close consideration to all the evidence available, I am unable to make a finding that BL drove without due care in performing the u-turn. This is so for the following reasons:
 - (a) BL established on the balance of probabilities that she was unable to get around the u-turn without stopping. As the road was not wide enough to get around in one sweep, BL stopped, and started to get ready to reverse, planning to then move forward into the park on the left-hand side of the road just past the driveway. This recollection is consistent with the nature and placement of the damage on each car, DQ's recollection of the angle of her car at the point of the collision, and DQ's video reconstruction, which showed a car not getting around in one sweep.
 - (b) BL recalls being stationary for some time (10-15 seconds) whilst she talked to people in the car. I am unable to make a finding about the exact length of time BL was stopped. I consider it unlikely that it was for that long, as she would have then been easily visible when DQ checked her surroundings before she rolled back. I consider it more likely that DQ verified correctly that her surroundings were clear at some stage before she started to roll back, but in the unknown length of time before she entered the roadway, BL was there, stationary, not yet having gone into reverse. The angle of the damage on each car confirms this order of events, but of course cannot confirm the exact timing.
 - (c) BL recalls seeing DQ get in her car before she started the manoeuvre from across the street. BL then recalls that she saw DQ coming out fast, but not until she was stationary by the driveway. She recalls a passenger had time to comment "*They look like they are getting close*". Once again, this recollection cannot be verified to assist me with timing.
 - (d) With the benefit of hindsight, it would have been wise for BL to wait until DQ had left, having seen her get in to her car from across the street. This is particularly so where the manoeuvre cannot be made in one sweep, as this makes it more likely that there is opportunity for a mistake by DQ. However, that is only said with the benefit of hindsight. BL had a right to perform the u-turn, as it was safe in both directions to do so, and she could not know that DQ would fail to see her when she was stationary and directly behind her. It would have been equally wise for DQ to keep ensuring the way was clear when she entered to roadway.
 - (e) The respective contributions in this case depend very much on timing. If BL's car was already stationary at the point of impact, this very much weights the case in favour of BL, as it indicates that BL was visible as DQ reversed, either fully stopped, or coming to a stop. If BL's car arrived late, it is more likely that BL should have seen DQ reversing, and waited for her.
 - (f) Whilst I cannot be certain about the matter, the weight of evidence favours BL's recollection that she was stationary. The placement and nature of the damage support this, showing a single impact point on the angle expected for the car as described, and showing that BL had not driven in to DQ, but the reverse.
10. For these reasons, I find that DQ is responsible for the costs as claimed.

Referee:

J Robertshawe

Date: 12 November 2020



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 28 days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.