



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 473

APPLICANT D Ltd

RESPONDENT AB

**APPLICANT'S X Ltd
INSURER**

The Tribunal orders:

AB is to pay the sum of \$30,000.00 to X Ltd on or before Friday 6 October 2023.

Reasons:

1. On 5 May 2022, there was a collision between D Ltd's [vehicle 1], driven by its director BM, and a [vehicle 2]. Both vehicles were using or had just used (according to the differing accounts) the small roundabout on [Road 1], to access the link road from [Road 1] towards the northwards [Road 2] onramp to the [Road 3]. BM entered the roundabout from the south, turning to his right, and AB entered the roundabout from the north, turning to his left. BM claims that the collision occurred on the roundabout as he was about to exit, whereas AB claims that the collision occurred on the link road after exiting the roundabout. The collision caused damage to the front left corner of the [vehicle 1] and the right-hand side of the Sprinter.
2. D Ltd and its insurer X Ltd now claim \$30,000.00 for the damage to the [vehicle 1], including uninsured losses of \$2,640.99.
3. The issues to be determined are:
 - a) Who was responsible for the collision?
 - b) What sum, if any, is AB liable to pay?

Who was responsible for the collision?

4. The tort of negligence requires payment of compensation when someone breaches a duty of care to another person causing foreseeable damage. Drivers have a duty of care towards other drivers, which includes compliance with the provisions of the Land Transport Act 1988 and the Land Transport (Road User) Rule 2004 (LT Rule).
5. AB gave evidence that the collision occurred after he exited the roundabout, and was caused by BM changing lanes without due care. He said that the collision occurred 200-400 metres from the roundabout, and pointed to a photograph of the [vehicle 2] pulled over to the left by a pole before the motorway interchange sign partway along the link road.
6. The pole in question is in fact only about 50 metres from the roundabout, being over the road from the [washing service company]. Of course, this does not prove that the collision happened

right where the van pulled over, but suggests that it happened somewhere before that point, either on the roundabout or less than about 50 metres beyond it.

7. BM gave evidence that he approached the roundabout in the middle of three lanes (the left of the two roundabout lanes), and was going to exit using the same lane because he was intending to head northwards on the motorway. He said the collision occurred as he was about to exit because AB failed to give way.
8. I consider it more likely that the collision occurred as BM described, which is more consistent with the damage on both vehicles. The damage to the [vehicle 1] was described in the Police Traffic Crash Report as “extensive”, which suggests some force to the impact despite low speeds. AB said the damage to the [vehicle 2] was to the right rear tyre. AB’s account would mean that BM tried to change lanes despite a very large white van being mostly in front of him in the left lane, which would be difficult not to see and was certainly not in a blind spot. It is notable that the Police Traffic Crash Report concluded the collision occurred as BM describes, the police having arrived on the scene almost immediately and talked to both parties.
9. On the balance of probabilities, I conclude that AB was responsible for the crash by failing to give way at the roundabout. This was a breach of LT Rule 4.6(1), which provides that a driver entering a roundabout must give way to traffic on the roundabout and to traffic approaching from the driver’s right.

What sum, if any, is AB liable to pay?

10. I find that the repairs claimed for damage to the [vehicle 1] are supported by the invoices provided and are consistent with the description of the collision, as only damage to the front left of the car has been repaired. I also find that the costs of repair are reasonable as they have been approved by an insurance assessor and a pre-accident valuation showed that the [vehicle 1] was economic to repair. The costs of the towing and rental car are also reasonable, although they do not add to the money payable since the cost of repairs alone exceeds the Tribunal’s \$30,000.00 limit.
11. I therefore conclude that AB is liable to pay \$30,000.00 in compensation for the damage to the [vehicle 1].

Referee: E Paton-Simpson

Date: 15 September 2023



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 20 working 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 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 20 working 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>.