



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 42

APPLICANT DD

RESPONDENT KI

RESPONDENT X Ltd
INSURER
(if applicable)

The Tribunal orders:

X Ltd is to pay DD \$7,725.00 within 28 days.

KI did not appear at the hearing.

Reasons

[1] DD claims from KI and KI's insurer, X Ltd, represented by ON, compensation for the damage done to his, DD's, car, which was damaged in a collision with a car driven by KI on 19 June 2022. X Ltd accepts that KI's driving was negligent, but considers that DD may have been in part responsible for the collision. X Ltd also questions the costs that DD incurred for storing his damaged car.

[2] DD said that he had been waiting behind a "Give Way" sign in order to drive from [mall] car park into the road. He had been intending to turn right. He said that there was a bend in the road to his right, and the visible length of road to the bend was some 30 – 40 metres. He had checked that the road was clear and pulled out into the road. He then heard a squeal of brakes and heard brakes locking, and KI's car crashed into the right side of DD's car.

[3] DD said that the road in question, being alongside a mall car park, had a speed limit of 30 kms per hour. He considered that he could easily and safely have completed his exit from the car park and turned right into the road if a car had suddenly appeared from the bend, provided that the car had been travelling at a reasonable speed.

[4] The point where the collision occurred was near to a police station. A police officer attended the scene, and witnesses described to the officer what they had seen. DD provided copies of three witness statements, each of which said that KI had been driving at an excessive speed of about 80 kms per hour. One witness stated that he had seen KI driving erratically before the collision and had cut him, the witness, off.

[5] DD also provided a police report. The report recorded that KI had acknowledged that he had been driving at a speed of 70 – 80 kms, and that he had believed the speed limit in the location was 50 kms per hour. The police officer notes in the report that KI had braked after speeding around the bend, and then skidded some 20 m before crashing into DD's car. The report also noted that there was a bend in

the road but that, if vehicles travelled at the posted speed limit there was plenty of time for a driver in DD's position to make the right turn that he had been intending to make.

[6] DD had only third-party insurance, and so claimed compensation for his damaged car from KI. DD said that he had not disposed of his vehicle, despite its extensively damaged state, because he had been awaiting the outcome of the Disputes Tribunal claim, which he filed on 20 October 2022. In the meantime, X Ltd had asked him to obtain a pre-accident valuation, which he did. He had no record of having been advised by X Ltd to sell his car; he had believed he had not been entitled to do so because his understanding was that X Ltd would be entitled to ownership of the car if it were to be written off.

[7] DD's report put a pre-accident value on his car of \$9,000.00. However, as he had bought it for \$6,000.00 only two weeks before the collision, he claimed \$6,000.00 for it. X Ltd had decided it was uneconomic to repair. He also provided evidence that he had paid \$1,725.00 to a company that had previously employed him for storage of his damaged car. DD said that he had had no choice but to pay for storage, as he had no ability to store it himself.

[8] For X Ltd, ON accepted that the evidence was clear that KI had been driving at an excessive speed and was, at least in part, at fault. However, she considered that DD had also contributed to the collision by exiting the car park in the way that he did. As KI had approached from DD's right, and DD had moved into the road from behind a "Give Way" sign, she considered that DD had failed to comply with his obligation to give way to KI.

[9] ON also queried KI's claim for the cost of storage. In her view, DD should have mitigated his losses by selling his damaged vehicle and thus not incurring storage costs for the period of several months for which he claimed.

[10] KI did not appear at the hearing today. However, ON accepted that X Ltd was liable to pay for whatever liability was established on his part.

The issues

[11] I must decide whether:

- DD has proved that KI drove negligently and caused the losses he claims; and
- if so, whether DD was contributorily negligent; and
- if KI is proven to be at fault, DD is entitled to recover the cost of storage.

Did KI drive negligently?

[12] There is no dispute about this. In my view, the evidence, including KI's own admission, establishes without doubt that KI was driving at a high speed, about 80 kph, in a 30 kph zone. Such driving, also described by an eye-witness as "erratic" was negligent, and caused KI to collide with DD's car.

Did DD drive negligently?

[13] The evidence does not show that DD was at fault in any way. The police officer who assessed the scene noted that DD could have exited the car park and turned right in plenty of time if KI had been driving at the posted speed of 30 kph. There was no reason for DD to expect that a car being driven at 80 kph would appear from around the bend. KI's excessive speed made it impossible for him to stop, which he would not have had to do in any event if he had been driving at the correct speed. Thus, I consider KI to be wholly at fault for the collision.

Is DD entitled to storage costs?

[14] I consider that DD has proven that he is entitled to the costs he incurred in storing his damaged car. He was reasonably awaiting the decision of X Ltd as to whether his car was to be written off or not. I was given no evidence that X Ltd had advised him to sell it. Rather, X Ltd had asked him to obtain a pre-accident valuation, and DD co-operated with X Ltd in dealing with the matter. The reason that the storage

period ran into several months was that KI had intimated to X Ltd, his insurer, that he was disputing liability. That was not DD's fault. Thus, I consider that DD is entitled to the cost of storage that he claims. I do not think that it matters whether he paid a commercial storage business or a previous employer, provided he incurred the cost, and the cost was reasonable. In my view, he has established his entitlement.

Result

[15] DD is entitled to be paid \$6,000.00 as the value of his vehicle, and \$1,725.00 for storage, a total of \$7,725.00. He is not entitled to recover his Disputes Tribunal filing fee, as that is not a cost that is ordinarily permitted by the Disputes Tribunal Act 1988.

Referee: C Hawes

Date: 14 February 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 of 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>.