



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 37

APPLICANT **EC**

RESPONDENT **ST**

APPLICANT'S **BC Limited**
INSURER
(if applicable)

The Tribunal orders:

ST is to pay BC Limited \$4,539.70 within 28 days of the date of this order.

Reasons

1. The applicant, EC, was travelling north along [road 1] when the front of ST's vehicle hit the right side of EC's vehicle. ST was entering into [road 1] from [road 2] at the time of the incident. [Road 2] terminates at [road 1] and is controlled by a give way sign on [road 2].
2. It was not economic to repair EC's vehicle. The total loss suffered by him is \$4,539.70 and he and his insurer, BC Limited, claim this amount from ST.
3. The issues to be decided are:
 - (i) Did ST exercise reasonable care when proceeding through the intersection?
 - (ii) Have the costs claimed been established?

Did ST exercise reasonable care when proceeding through the intersection?

4. All drivers owe a duty arising under the law of tort to take reasonable care to drive in a manner that does not cause harm to other drivers. This duty is reinforced by Rule 4.2(2) and (4) of the Land Transport (Road User) Rules 2004. Rule 4.2(2) provides that a driver turning or about to turn from a road controlled by a give-way sign must give way to any vehicle approaching or crossing the intersection on a road not controlled by a give way sign. Rule 4.2(4) provides that a driver on a terminating road who is approaching or crossing a T-intersection must give way to a vehicle on the continuing road.

5. ST claims that EC did not indicate his intention to turn right into [road 2] and therefore ST thought he was intending to go straight ahead. He said that EC was travelling about 40km/hour and suddenly turned right as ST had travelled about 5 meters onto [road 1] to complete his right-hand turn.
6. EC denies that he did not indicate or that he was moving at the time of the impact. He said that he was stationary at the time waiting to turn right when ST pulled out from the intersection and hit the right side of his vehicle.
7. I find, on the evidence before me, that it is more likely than not that EC was stationary at the time of the impact and had not begun to turn right. The damage to his vehicle which is squarely on the right side (drivers and passenger's door) supports his version. ST's evidence that the front of his vehicle hit the right side of EC's also supports EC's version of the event. If EC was turning at the time of the impact, it would be more likely that the right front of his vehicle would impact with EC's vehicle, not the direct front. I also accept, on the evidence before me, that it is more likely than not that EC was indicating his intention to turn right.
8. However, even if the incident did occur in the way described by ST, he would still be liable for the damage to EC's vehicle. This is because he failed to give way at the T-intersection which is controlled by a give-way sign, and he failed to give way to EC who was travelling on the continuing road. His obligation to give way to EC is regardless of whether EC was turning right into [road 2] or travelling straight along [road 1]. This means that ST is in breach of Rules 4.2(2) and (4) and he therefore has not taken reasonable care to drive in a manner that does not cause harm to other road users (EC).
9. I am therefore satisfied that ST is solely liable for the damage to EC's vehicle.

Are the costs claimed established?

10. I find that they are.
11. The amount claimed has been established by photographs, a quote to repair the vehicle (\$9,582.95), a pre accident valuation of the vehicle, and evidence to support the value of the wreck. This evidence was supported by the evidence of NO who represented BC Limited.

Referee: R Merrett

Date: 23 February 2024



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>.