



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 615

**APPLICANT**      **EC**  
**RESPONDENT**    **UI**  
**APPLICANT'S**    **X Insurance**  
**INSURER**

**The Tribunal orders:**

UI is to pay \$8,588.44 to X Insurance on or before 5.00pm on 11 December 2023.

**Reasons**

1. EC was driving north on [Street] which has two lanes in each direction separated by a median. Soon after he passed the entrance to [Landmark], which was on the other side of the road, he pulled into the median strip intending to do a U-turn. Before he started the turn and while he was still stationary, UI drove out from the [Landmark] driveway heading north. He drove across the two south bound lanes and median into the north bound lane. As he was driving across the median the front right corner of UI's [vehicle] collided with the rear bumper of EC's [vehicle].
2. EC and his insurance, X Insurance, claim \$8,588.44 to repair EC's car. All repair costs have been paid by X Insurance.
3. The issues that need to be decided are:
  - a) Did UI fail to give way to EC?
  - b) Did EC contribute to the cause of the collision?
  - c) Is UI liable to pay the amount claimed?

**Did UI fail to give way to EC?**

4. A driver is negligent if they breach a duty they owe to another driver and cause damage as a result. A driver exiting a driveway must give way to another vehicle on the road (Rule 4.4 Land Transport (Road User) Rule 2004).
5. UI said he saw EC driving passed heading north on the other side of the road as he was looking to his right. He said he then looked to his left and then right again. As there were no cars driving towards him from the north on his side of the road and no cars coming from the south he drove out from the driveway. He said he did not see any indicators on EC's car and did not see him pull into the median. UI said he tried to avoid EC's car by swerving but could not prevent the collision.

6. UI owed a duty of care to EC when he exited the [Landmark] carpark to give way to EC, as EC was on the road. I find UI failed to ensure the path he was driving into was clear when he drove into EC's car. EC's car was there to be seen had UI done a proper check of the direction he was heading when he drove onto the road. Therefore, I find that UI was negligent.

**Did EC contribute to the cause of the collision?**

7. UI believes that EC contributed to or caused the collision for the following reasons:
- a) EC was using his cell phone before he pulled into the median;
  - b) EC overshot the [Landmark] driveway, which has a large entrance way and easy to negotiate, probably because he was using his cell phone;
  - c) he did not see EC indicate before he drove onto the median;
  - d) EC had stopped on the median when he was not allowed to do so;
  - e) as there were no cars coming from the north, EC could have started his U-turn at the same time that he (UI) drove out from the [Landmark] driveway. Had EC made the turn then, the collision would not have occurred.
8. Having considered all of the evidence I am persuaded by EC's evidence that he was not using his cell phone prior to or at the time of the collision. EC said he was doing a U turn to go back to either [Landmark] or [Landmark 2], and that he had indicated before pulling into the flush median.
9. While EC was not turning right into a side road or a driveway I find he was able to use the flush median as a safe place while he was waiting for a clear path to make a turn to his right and head in the opposite direction. He was not parked or stopped, but was merely temporarily stationary.
10. EC's evidence is also persuasive that there was traffic coming from the north. I am satisfied that if there had been no traffic coming from the north he would have started his turn earlier. His view is that UI was trying to get across the road quickly and "beat" the approaching traffic.
11. For the above reasons I find EC did not contribute to the cause of the collision.

**Is UI liable to pay the amount claimed?**

12. UI has breached a duty of care he owed to EC and in doing so has caused damage to EC's car. UI is liable to pay the cost of putting EC back into the position he would have been in had the damage not occurred. I find that cost is the cost to repair EC's car.
13. UI says the amount claimed for the repair is excessive, but acknowledges that he has no expertise in car repairs of this nature. He says he took the bumper off the EC's car at the collision site and should not be charged for the removal of the bumper as part of the 'remove and replace' costs.
14. I am satisfied that the costs claimed are reasonable and are for the damage caused in the collision. The documentation establishes that the insurer's assessor has reduced the repair costs originally calculated by the repairer which I am satisfied indicates the cost has been considered in terms of reasonable industry costs for the damage done. I am satisfied that the bumper was off the car when the costs were assessed and would be reflected in the remove and replace costs.

**Referee: W Lang**  
**Date: 23 November 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>.