



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 114

APPLICANT EI
APPLICANT RA
RESPONDENT IL
RESPONDENT U Ltd
INSURER
(if applicable)

The Tribunal orders:

1. The Applicants' claim is dismissed. The Respondent's counterclaim is upheld and the Applicants are to pay the Respondent's Insurer U Ltd \$4,606.44 within 30 days of the date of this order.

Issues:

- I. Who is liable for causing the accident?*
- II. Did RA breach a duty of care?*
- III. What are the reasonable losses suffered by IL?*

Reasons:

- I. Who is liable for causing the accident?*
2. On September 22 2022, at approximately 5.30 pm, the Applicant (RA) and Respondent (IL) were travelling along [Address] when they were involved in a car accident. Both cars suffered damage, and neither driver accepts liability for causing the accident. The Applicants, RA and her husband (EI) claim \$8,080.00 for the damage they say the Respondent IL caused to their car. IL, through her insurer U Ltd, denies liability for the accident and has counter claimed for \$4,606.44, the cost of repairing the damage to her car.
3. RA gave evidence at the hearing that she was travelling down [Address] when she remembered that she needed to pick some milk up from [Supermarket], which was in the opposite direction to which she was travelling. According to her evidence, she decided to slow down and move to the middle of [Address], intending to turn right across [Address] into a driveway on the opposite side of the road, so that she could turn around. She was clear in her testimony that although the [Address] is a one lane road, that she pulled over to the centre of the road far enough so that

there was 'definitely' room for cars to pass on her left. RA contended that as she was about to make the turn, IL came up on her right side and crashed into her car, causing damage to the front left corner of IL's car and to the right front driver door of RA's car.

4. IL gave evidence that she was driving straight along [Address] when she noticed RA's red car stopped towards the left side of the road. As she didn't see any brake lights or other lights on the car, she assumed that the car was parked and she continued onward, intending to pass it. She said that as she was about to pass the car, it suddenly turned to the right and into her path. She swerved her car to the right in an attempt to avoid RA's car, but she was not able to prevent herself crashing into it.
5. Images provided to the Tribunal show that although [Address] is a one lane road, it is wide enough to accommodate two cars if one was passing another. The parties provided photographs of the immediate accident scene were provided to the Tribunal and show both vehicles at the time of impact had partially diagonally crossed the centre line of the road, with IL's car to the right of and behind RA's car, with approximately $\frac{3}{4}$ of its length over the centre line, and RA's car on a similar diagonal and approximately $\frac{1}{4}$ of its length over the centre line. The point of impact is clear with the left front corner of IL's car having struck RA's car on its right front passenger side and becoming embedded.
6. Both parties provided written, oral and photographic evidence to the Tribunal. Having regard to all relevant evidence, RA's version of events does not seem to be the most likely scenario. For IL's vehicle to have struck RA's vehicle as she was paused to turn in the middle of [Address] in the manner RA described and to cause the angle of impact depicted in the photographs, IL would have had to be driving so far on the right of RA that she must have been driving on the opposite side of the road and at a diagonal angle to RA's right. Given the amount of traffic visible in the photographs on the opposite side of [Address], I consider it unlikely that this could have occurred without other vehicles being impacted by IL driving on the wrong side of the road.
7. On balance of probabilities, I am satisfied that it is more likely than not that the angle of impact in the accident was caused by RA having pulled to the left of [Address] to make a 'U' turn, as described by IL. As she was coming from behind RA, IL may have been in RA's blind spot as she turned right across [Address]. The angle the cars came to rest at was likely due to IL seeing RA turning across her path and trying unsuccessfully to swerve out of the way.

II. Did RA breach a duty of care?

8. A person may not drive a vehicle, or cause a vehicle to be driven, carelessly or without reasonable consideration for other persons: s8 Land Transport Act 1998. A driver also owes a common law duty of care to other drivers to take reasonable care in operating their vehicle and will be responsible for any reasonably foreseeable damage suffered as a result of a failure to do so. The duty to take reasonable care includes the duty to keep a proper look out when making a turn.
9. I find that RA breached her duty of care to take reasonable care when operating her vehicle by failing to check that the road behind her and to her right left was clear before making a right turn across [Address]. The collision with IL and the damage to IL's car and RA's own car that was caused by the collision were reasonably foreseeable consequences of the breach of this duty, and as a result RA is liable for her own losses and for the cost of the reasonable losses suffered by IL.

III. What are the reasonable losses suffered by IL?

10. I find that the \$4,606.44 counter claimed by the Respondents represents the actual and reasonable loss resulting from the collision. The damage is consistent with the nature of the impact and includes repair of the denting and scraping on the left front of IL's vehicle.

Referee: Kaho

Date: 2 March 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>.