



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 738

APPLICANT **EL**

RESPONDENT **MN**

APPLICANT'S **K Ltd**
INSURER

The Tribunal orders:

MN is to pay \$8,615.04 to K Ltd on or before 5.00pm on 18 January 2024

Reasons

1. EL had driven through the traffic lights from [Road A] onto [Road B], [City] heading towards [suburb]. The two lanes on his side of the road merged to one. At around where the lanes merge the front of EL's car collided with the driver's door of MN's car
2. EL and his insurer, K Ltd, claim \$8,615.04 for the repair costs to EL's car. EL has paid the excess under his insurance policy (\$500.00) and the remaining repair costs have been paid by K Ltd
3. The issues to be resolved are:
 - a) Did MN fail to give way to EL?
 - b) Did EL contribute to the cause of the collision?
 - c) Is MN liable to pay the amount claimed?

Did MN fail to give way to EL? Did EL contribute to the cause of the collision?

4. A driver is negligent if they breach a duty they owe to another driver and cause damage as a result.
5. MN says he was driving in the same direction as EL and that he was in left lane and ahead of EL at the point where the lanes merge. He says EL was speeding and where the lanes merge that he sped up and drove into the side of his car.
6. EL's view is that MN did a U-turn in front of his car. He says he did not see MN's car until the driver's door of MN's car was directly in front of his car. He believes MN may have been stopped

on the side of the road before doing a U-turn.

7. The driver's versions of where the cars were driving prior to the collision is quite different. I have considered all of the evidence, including the photograph of MN's damaged car, the photos of EL's damaged car along with the assessor's and the repairer's evidence. I find the evidence of the damage to the vehicles is consistent with MN turning across in front of EL's car. In particular the damage to MN's car is consistent with it being hit by the front of EL's car, often described as a T-bone collision. I am satisfied that had the collision occurred as MN described, the damage would have affected panel's on either side of the driver's door, and there would have been scrape marks along the side of MN's car.
8. I am not persuaded by MN's evidence that EL was driving too fast or in any way has contributed to the cause of the collision. I am satisfied that EL braked hard in an attempt to lessen the impact of the collision.
9. MN owed a duty of care to EL not to drive into his lane or across his path. This is the case regardless of whether MN was parked on the side of the road before the collision or completed his movement from a position on the road. EL's car was there to be seen had MN done a proper check. Therefore I find that MN was negligent. I find that EL has not contributed to or caused the collision.

Is MN liable to pay the amount claimed?

10. MN has breached a duty of care he owed to EL and in doing so has caused damage to EL's car. MN is liable to pay the cost of putting EL and his insurer, L Ltd, back into the position they would have been in had the damage not occurred. I find that is the cost to repair EL's car (\$8,151.80) along with the cost to tow it from the collision site to storage and then to the repairers (\$463.24). These costs total the amount claimed of \$8,615.04.
11. I am satisfied that the costs claimed are reasonable and are for the damage caused in the collision. Mr B for K Ltd has confirmed that the cost ordered is to be paid to K Ltd who will reimburse EL for his excess. For that reason the total costs are to be paid to K Ltd.

Referee: W Lang

Date: 14 December 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>.