



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 453

APPLICANT ET

RESPONDENT TM

APPLICANT'S INSURER B Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 15 February 2022, there was a collision between ET's [car 1] and TM's [car 2] on the [Street 1] roundabout. ET claims that she entered the roundabout from [Street 1] and was indicating to take the [Street 1] exit. She claims that TM entered the roundabout from [Street 2] without stopping or giving way to her. The impact was between the front right corner of [car 2] and the front left wheel area of [car 1].
2. ET and her insurer B Ltd now claim the cost of repairs to [car 1] of \$6,017.15. There were no uninsured losses.
3. The issues to be determined are:
 - a) Who was responsible for the collision?
 - b) What sum, if any, is TM liable to pay?

Who was responsible for the collision?

4. The tort of negligence requires payment of compensation when someone breaches a duty of care to another person causing foreseeable damage. Drivers have a duty of care towards other drivers, which includes compliance with the provisions of the Land Transport Act 1988 and the Land Transport (Road User) Rule 2004 (LT Rule).
5. LT Rule 4.6(1) provides that a driver entering a roundabout must give way to traffic on the roundabout and to traffic approaching from the driver's right. According to ET's account, TM caused the damage by failing to give way.
6. However, TM disagreed with ET's account of where and how the collision occurred. He claimed that he entered the roundabout safely, but that ET entered at speed and may have driven over the raised centre of the roundabout. He claimed that ET was trying to take the [Street 3] exit, and that the collision occurred just before that exit as she pulled left into his lane. LT Rule

4.2(2) provides that a driver changing lanes or about to change lanes must give way to any vehicle not changing lanes.

7. In support of this account, he provided a photograph of ET heading northwards towards [Street 1] north exit after the collision, suggesting that she had already passed the [Street 1] south exit. He also noted that she was driving without a supervisor on a learner's licence (which she admitted), and said she seemed to be intoxicated.
8. I find both accounts to be plausible and consistent with the damage to both cars. Although ET's claim to be heading home adds some credibility to her account, and TM's actions after the collision add some credibility to his account, I find insufficient reason overall to prefer one account over the other.

9. What sum, if any, is TM liable to pay?

10. ET bears the onus of proving her claim. Since she has not proven that her account is more likely to be true than TM's account, I conclude that TM is not liable to pay for the damage. TM said he was considering making a counterclaim, but he did not do so in time, and in any event is in the same situation of not being able to prove his version of what happened. Both parties must therefore bear the cost of their own repairs.

Referee: E Paton-Simpson

Date: 21 August 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 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>.