



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

**District Court**

**[2023] NZDT 173**

**APPLICANT**      **FG Ltd**

**RESPONDENT**    **SB**

**SECOND**            **ID Limited**  
**RESPONDENT**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. At about 5am on the 13<sup>th</sup> of July 2022 ST was travelling on [road] when the vehicle owned by his company ([FG Ltd]), hit a large pothole causing damage to the vehicle and making the vehicle undriveable.
2. ST said a wheel rim and two tyres were damaged.
3. ST reported the matter to SB and then to ID Limited which is contracted to maintain and repair this road.
4. The pothole was repaired late the same day.
5. ST claims compensation of \$1000 for the damage and associated costs he incurred from both SB and ID Limited.
6. SB's written submission includes acceptance that it owes a duty of care to road users. There is no statement from ID Limited concerning this aspect of the law, however as SB accepts this position it follows that ID Ltd must also accept this position.
7. Therefore, the issues to be resolved are:
  - a) Did SB and/or ID Ltd breach the duty of care owed to FG Limited?
  - b) If so, are they bound to compensate FG Limited for its losses?

**Did SB and/or ID Limited breach the duty of care owed to FG Limited?**

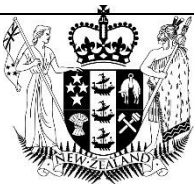
8. The Tribunal has jurisdiction to determine a dispute based on negligence if the applicant has suffered damage to their property as a result. The law of negligence provides that we owe a duty of care to ensure we do not cause a loss to someone else due to our conduct.
9. ST said he travelled this stretch of road daily Monday to Friday. On the day the damage occurred he said it was 5.30am on a Wednesday and still dark. He said he struck the pothole, and his vehicle was damaged. He measured the pothole that morning as being 1100mm

longways and between 200mm and 240mm in depth. He said the pothole is on a bend and over the previous days driving on that road he had not hit it. He rang and reported the incident.

10. ST said both respondents had a duty to maintain the roads or to warn motorists of potholes like this.
11. ST said he asked SB for months to give him information about its inspection of this stretch of road and it ignored him. Inspection reports were produced at the second hearing and indicate that stretch of road was the subject of an inspection 4 days earlier by ID Ltd. The report does not identify the type of inspection carried out and does not detail the exact area. It does not identify this pothole.
12. QR and CD from SB say it is likely the pothole opened up in those intervening days and with heavy trucks and rain it does not take long for damage to occur and a pothole to become significant. They said this can occur in a day.
13. CD said that SB had no knowledge of the pothole prior to ST's incident, but when it was reported by ST, ID Ltd was instructed to repair it immediately and this occurred the same day.
14. CD said that ID Ltd was contractually responsible for the repair of roads that were brought to its attention, as had occurred in this case. CD agreed that SB owes a duty of care to warn motorists or to repair potholes that it has knowledge of, but in this case SB had no knowledge of the pothole and therefore could not have repaired it.
15. I find neither SB or ID Ltd breached the duty of care to ST and his company for the following reasons:
  - SB has a statutory responsibility for the repair and maintenance of the roads as enacted in law by Parliament.
  - SB agreed it has a duty of care to warn motorists of a hazard on the road that it has created or knows about.
  - In ID Ltd inspection some four or so days earlier this pothole was not identified.
  - I accept CD's argument that potholes can develop very quickly in wet weather.
  - ST did not hit the pothole in the two previous days of travel over that road, nor in the later part of the previous week when the inspection took place.
  - It is more likely than not that neither SB nor ID Ltd knew the pothole was present.
16. SB fulfilled its statutory duty by repairing the pothole on the same day it was reported to them. Because of this finding I do not need to address the issue of compensation claimed by ST.

**Referee: J Savage**

**Date: 7 June 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>.