

BETWEEN

FM Ltd
APPLICANT

FMM Ltd
SECOND APPLICANT

FMF Ltd
APPLICANT'S INSURER

AND

TN
RESPONDENT

AND

TNN Ltd
SECOND RESPONDENT

Date of Order:

26 April 2017

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the claim is dismissed against both the first and second respondents.

Facts

[1] Mr FM for FMM Ltd and Mr TN for TNN Ltd were the drivers of a van and a truck/trailer unit respectively, which collided at an intersection.

[2] According to both drivers, Mr TN was initially stationary in his truck at the intersection of XX St and YY St in ZZ Suburb, waiting for a gap in busy traffic to turn left onto YY St.

[3] In this location XX St has one lane in each direction (with a wide grassed island in the middle of the road), but each lane is very wide and Mr TN's truck was positioned in such a way that allowed Mr FM's van to pull alongside to the left of the truck.

[4] Mr FM had turned left out of a commercial premises onto XX St a short distance back from the intersection and approached from the rear of the stationary truck. As he wished to turn left and the position of the truck in the road was such that there was space to its left, Mr FM drove to the left of the truck up to the lines marking the give way intersection. He says he was not able to proceed left because the truck blocked his visibility of traffic on YY St.

[5] As the traffic on YY St stopped for Mr TN's truck to make its turn, Mr TN began to turn left and as he did so, the rear cab/fuel tank area collected the front right of Mr FM's van causing an extensive amount of damage.

[6] The cost of repairs to Mr FM's van was \$19,534.69 and is reduced to \$15,000.00 for the purposes of this claim. Mr FM and his insurer seek an order holding Mr TN and his employer liable for the cost of repairs on the basis that Mr TN did not check adequately that his way was clear to turn.

Issues

[7] The issues to be determined are:

- (a) Was Mr TN indicating a left-hand turn prior to the impact?

- (b) Did either driver breach his duty of care to the other, specifically:
- (i) Did Mr TN breach Road User Rule 2.5 in relation to changing direction?
 - (ii) Did Mr FM breach Road User Rule 2.8 relating to passing on left?
 - (iii) Did Mr FM breach Road User Rule 2.6 relating to passing in general?
- (c) What are the reasonable costs of repair to Mr FM's van?

Was Mr TN indicating a left-hand turn prior to the impact?

[8] I find, on the balance of probabilities, that Mr TN was indicating left as he waited at the intersection. Mr TN is clear that his indicators, which include repeater indicators at the side of the truck, were on as he waited to turn left.

[9] Mr TN says that because of the size of his truck and trailer unit, he needs a wide angle to turn the corner to the left and that is why he positioned the truck in such a way as there was space to his left in the single wide lane. As the driver of a large vehicle I consider it very likely that Mr TN is particularly aware of the necessity of indicating his intended direction of travel because it would be easy for other drivers to mistakenly assume from the truck's position in a lane that it may be turning right.

[10] Mr TN also notes that he pointed out the still-flashing indicator to Mr FM after the impact. Mr FM says he does not recall seeing the left-hand indicators on the truck as he approached from behind. He also does not recall them being pointed out to him after the impact. However Mr FM also said at the hearing that he remembers thinking to himself after the collision "those could have been switched on just now". I infer from that recollection that Mr FM did see the left-hand indicators flashing after the collision and combined with other factors addressed above, I find it most likely this was because they had been on prior to the impact, indicating the truck's intended direction of travel to the left.

[11] Mr FM contends that even if the left indicators had been on, Mr TN still has a duty to check for vehicles to his left and these issues are addressed below.

Did either driver breach his duty of care to the other?

[12] Given the finding above that Mr TN was indicating to turn left, the fact that his truck was occupying a central-to-right position in a road without lane markings (that is, a single lane, albeit a wide one) and the fact that Mr FM came from behind the stationary truck before moving to its left in the same lane, I consider Mr FM to have made a most unusual and unwise manoeuvre.

[13] However Mr FM contends that it is Mr TN who was negligent and in breach of his duty to Mr FM as a fellow road user because, he says, both vehicles were in a stationary position at the lines marking the give way intersection immediately before the impact and Mr TN did not check that his path was clear prior to moving off. Mr FM says that he was not able to avoid the truck as it crossed his path, colliding with the front right of his van.

[14] Mr FM says that Mr TN is in breach of Road User Rule 2.5 which states, about changing direction, that *“a driver intending to turn to enter another roadway or a vehicle entrance to the left must (a) move as far as practicable to the left side of the roadway before reaching the point at which the driver intends to turn”*.

[15] However there is no evidence that Mr TN was positioned further to the right than he needed to be given the size of the truck and trailer unit and therefore the angle needed for his left-hand turn. The wording “as far as practicable” allows for this type of situation where particular circumstances dictate that the position from which a vehicle may need to turn left will not be ‘hard left’. For these reasons I find that Mr TN has not breached this rule.

[16] Mr FM also argues that he was entitled to pass the truck on the left according to Road User Rule 2.8 because, even though the truck was not in a separately marked lane, the truck was stationary. However, this is not a typical passing situation, because the truck was stationary *at an intersection* in a single lane with its indicator on to turn left and Mr FM has positioned his vehicle immediately adjacent in its intended direction

of travel. Mr FM has said himself that once he reached the lines marking the intersection, he could not proceed because the truck was blocking his view. This was entirely predictable and was not therefore, in fact, a passing manoeuvre because Mr FM could not move past the truck to the left. A more prudent driver, when approaching an indicating vehicle in a single lane at an intersection, would have waited behind that vehicle as both were moving in the same direction and there was a single lane.

[17] I note that Road User Rule 2.6 states that “A driver must not, when passing another vehicle moving in the same direction, move into the line of passage of that vehicle until the manoeuvre can be made safely and without impeding the movement of that other vehicle.” Even if Mr FM had been able to keep moving, it was not a manoeuvre that could be made safely or without impeding the movement of that other vehicle which had the right of way, having been first at the intersection in a single lane.

[18] Mr FM’s view appears to be that, regardless of all the above, he was able to position himself alongside the truck and that, having done so, Mr TN should have looked before pulling out from his stationary position. I am not convinced from what I have heard that Mr TN had any such duty to Mr FM, or even that he would have been able to see the van from his position in the cab if he had looked carefully. Rather I find that Mr FM has placed his vehicle in harm’s way in an unusual and unsafe manoeuvre and, in doing so, has not driven with the care expected of the ordinary prudent driver.

[19] I note that TNN Ltd has not claimed for its costs as there was minimal damage sustained to the truck.

What are the reasonable costs of repair to Mr FM’s van?

[20] As I have found no negligence proven on the part of Mr TN, this issue does not need to be addressed, and the claim is dismissed against both respondents.