

BETWEEN

FP
APPLICANT

FPP Ltd
APPLICANT'S INSURER

AND

TK
RESPONDENT

TKK Insurance Co. Ltd
RESPONDENT'S INSURER

Date of Order:

20 January 2016

Referee:

Referee Paton-Simpson

ORDER OF THE DISPUTES TRIBUNAL

TK is to pay the sum of \$15,000.00 to FPP Insurance Ltd on or before 3 February 2016.

Facts

[1] On 24 June 2015, there was a three-car collision between a car in front driven by a third party, Ms FP's car and Ms TK's car on XX Drive. The front car braked suddenly, and Ms FP claims that she stopped short of the front car, but that Ms TK hit her from the rear, pushing her into the front car and causing damage to both the front and rear of Ms FP's car.

[2] Ms FP and her insurer FPP Insurance Ltd (FPP) now claim \$15,000.00 for the damage to Ms FP's car, abandoning that part of the claim over this sum in order to bring the claim within the Tribunal's jurisdiction. There were no uninsured losses.

Issues

[3] The issues to be determined are:

- (a) Did Ms FP stop in time to avoid hitting the front car, or did she crash into the front car before being hit by Ms TK's car?
- (b) If the latter, how should the damage be apportioned? Did Ms TK cause at least \$15,000.00 worth of the damage to Ms FP's car?

Did Ms FP stop in time to avoid hitting the front car, or did she crash into the front car before being hit by Ms TK's car?

[4] The relevant law is the tort of negligence, which applies 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 5.9(3) requires drivers following behind another vehicle to be able to stop short of the vehicle ahead if the vehicle ahead stops suddenly. TTK Insurance Co. Ltd (TKK) accepted that Ms TK was responsible for the damage to the rear of Ms FP's car, but not to the front, because it claimed that Ms FP had crashed into the front car before being hit by Ms TK's car. The police traffic crash report recorded that the driver of the front car reported two impacts, and that Ms FP had said "I stopped but crash into him and then felt someone crash into the back of my car".

[6] However, Ms FP gave evidence that her car had already managed to stop short of the front car at the time of the collision. Ms TK was unable to give evidence on this point. I find that Ms FP's direct evidence carries more weight than hearsay evidence of what she said at the time, especially since what she said at the time may have been unclear due to language difficulties.

[7] I considered whether to adjourn to give TKK the opportunity to call the driver of the front car as a witness. However, it is unnecessary to make a finding on this factual issue if it would not affect the outcome of the claim. I have therefore proceeded to determine whether, if two impacts could be proven, it was nevertheless likely that Ms TK caused at least \$15,000.00 worth of the damage to Ms FP's car.

If two impacts could be proven, did Ms FP cause at least \$15,000.00 worth of the damage to Ms TK's car?

[8] FPP Ltd gave evidence that the total damage to Ms FP's car would have cost \$36,288.84 to repair, plus the cost of painting. Of this total, \$20,546.86 was attributable to the rear damage, and \$15,741.98 to the front damage. The car, which had an estimated pre-accident value of \$36,000.00, was written off, and the total loss was \$32,890.10.

[9] None of these figures were disputed, but TKK presented evidence that the car would only have been worth around \$12,000 before the rear damage but taking into account the frontal damage. Therefore TKK argued that Ms TK was only responsible for writing off a \$12,000 car, and should only have to pay this sum less the salvage value.

[10] TKK's argument assumes that all of the frontal damage should be attributed to the first impact. However, it is likely that being pushed further into the front car from behind would have worsened the frontal damage to Ms FP's car. There is no evidence as to how much of the frontal damage to Ms FP's car is attributable to the second impact, so it is unknown what the market value of the car after the first impact would have been.

[11] Also, even if all of the frontal damage were caused by the first impact, it was the second impact that made it uneconomic to repair the frontal damage. If Ms TK had not hit Ms FP's car, Ms FP could have repaired the frontal damage rather than selling it as a damaged vehicle. The second impact deprived her of that option and increased her loss to \$32,890.10 rather than just the cost of the frontal repairs.

[12] Therefore I find that even if two impacts could be proven, it is likely that Ms TK caused at least \$15,000.00 worth of Ms FP's total loss of \$32,890.10. Accordingly I find Ms TK must pay \$15,000.00 for the damage to Ms FP's car.