



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 286

APPLICANT GN

RESPONDENT MX

**APPLICANT'S B Ltd
INSURER
(if applicable)**

The Tribunal orders:

The claim by GN against MX is proved. MX is to pay B Ltd the sum of \$20,493.59 on or by 5:00 pm on 21 August 2023.

Reasons

1. On 21 October 2023 the car driven by MX drove into the back of GN's parked car around 4:30 am causing damage. GN's (the applicant) through his insurer now brings a claim against MX for \$20,493.59.
2. The issues to be resolved are:
 - (a) Is MX responsible for the collision?
 - (b) If so, are the costs claimed justified and reasonable?

Is MX responsible for the collision?

3. MX accepted that he shouldn't have been driving. Further, it was not disputed that there was a collision caused by MX's car being driven into the back of GN's parked car, which was in turn shunted into another car. However, it is necessary for me to consider the evidence of the applicant in support of the claim.
4. Z who attended the hearing by telephone as a representative of B Ltd, provided a copy of a self discharge record form Te Whatu Ora in [redacted].
5. That document confirmed that MX suffers from Epilepsy, and although he discharged himself from hospital before he could be seen by a doctor, he had reported that he thinks that he "may have had a seizure at the time. It was noted that MX had previously had two seizures in the last year and had missed two out of seven days medication.

6. The document also notes that before MX discharged himself he was advised that it is against the law to drive a car given his recent seizure history.
7. Z also explained that according to the Ministry of Transport's advice to B Ltd, if a person has suffered a seizure they should not drive a car for 12 months.
8. A claim in negligence consists of a breach of a duty of care owed to another as a result of which that other suffers loss. The duty is owed to those who are in such a relationship of proximity that a reasonable person would recognise that harm might ensue to them if reasonable care were not exercised. What amounts to negligence is a question of fact in each case, damage being reasonably foreseeable is the gist of the action.
9. All drivers have a duty of care to all other road users to drive safely and not cause damage to other road users.
10. MX had a duty of care to other road users to drive safely.
11. I have considered MX's explanation and the discharge document provided by B Ltd and I am satisfied that when MX made a decision to get behind the wheel of his car and drive on a public road, he was in breach of his duty of care and that a collision was reasonably foreseeable. I am also satisfied that the other requirements of negligence have been fulfilled.
12. For these reasons I am satisfied that the applicant through his insurer has proved that MX was negligent and responsible for the collision.

If so, are the costs claimed justified and reasonable?

13. MX explained that he disputes the costs claimed because he wasn't given the chance to look at the damage caused and find out what he believes would be reasonable costs. MX's mother also said that the first she knew of the high costs and the damage was when she received the court papers.
14. However, Z submitted that MX was sent the information in March this year and responded confirming that he had received the photos and assessment and in his reply he disputed liability for the collision but did not request the opportunity to question the costs for the repairs.
15. I am satisfied that If MX wanted to question the costs and arrange for his own assessment of the damage he had plenty of time to do so but was at that stage disputing liability for the collision not the costs for repair.
16. Further, I have looked at the photos, considered the assessment and the parts requests and invoices and I am satisfied that the costs of around \$17,000.00 GST inclusive for the repairs to a relatively valuable and late model car are justified and reasonable. I also accept that the claim for around \$2000 for a hertz rental car by the other insured (GN's spouse) in order to transport GN to appoints while GN was going through a period when he required brain surgery is justified. Because the car was in the repair shop, it is a foreseeable consequence that the damaged party would require alternative transport.
17. Further an extra cost for around \$700.00 for towage of the damaged vehicle is also foreseeable and justified.
18. For these reasons I find the claim by the applicant against MX is proved and MX is to pay B Ltd the sum of \$20,493.59.

Referee: K Johnson

Date: 27 July 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>.