

**BETWEEN**

**GS**  
APPLICANTS

**AND**

**SHH**  
FIRST RESPONDENT

**AND**

**HSG**  
SECOND RESPONDENT

**AND**

**SGA Ltd**  
THIRD RESPONDENT

Date of Order:

30 September 2015

Referee:

Referee: Paton-Simpson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed.**

## **Facts**

[1] On Tuesday 24 March 2015 at around 8:50 am, Ms GS was driving down X Street, Y Suburb, when she suddenly lost control of the car. The car, a Daihatsu owned by Ms GS and Mr GS, crashed into the kerb, causing damage to the front wheel and rendering it undriveable. The applicants claim that the crash was caused by a fuel spill from a previous crash at the top of the road, which was washed down the road by the rain, and that SHH (SHH) or HSG (HSG) was responsible for not blocking the road and/or cleaning up the spill promptly.

[2] The car was towed away by or on behalf of SGA Ltd, now known as SGA, and stored on its premises. The applicants claim that further damage was done to the vehicle by SGA Ltd when unloading the car from its tow truck.

[3] The applicants now claim \$10,152.06 in damages against SHH, SHG and SGA Ltd for damage to their car, various consequential losses, and costs.

[4] SGA Ltd did not attend the hearings or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.

## **Issues**

[5] The issues to be determined are:

- a. When did the prior crash happen? When was SHH/HSG informed of the fuel spill? Did any delay by SHH/HSG in responding to the fuel spill cause Ms GS's crash?
- b. If SHH/HSG was negligent, what sum is payable in damages?
- c. Did SGA Ltd cause further damage by negligent towing?
- d. If so, what sum is payable in damages by SGA Ltd?

*When did the prior crash happen? When was SHH/HSG informed of the fuel spill? Did any delay by SHH/HSG in responding to the fuel spill cause Ms GS's crash?*

[6] The relevant law is the tort of negligence, which applies when someone breaches a duty of care to another person causing foreseeable damage. Both SHH and HSG seemed to accept that HSG had a responsibility to respond promptly to potential road hazards such as

spills. HSG is a council-controlled organisation that deals with SHH's transport functions and operations. Since HSG's duties are performed on behalf of SHH, I find that both SHH and HSG had a duty of care to take adequate precautions to prevent damage to other vehicles following the fuel spill, and to do so reasonably promptly.

[7] However, I find that there is no evidence that HSG did not respond promptly enough to the fuel spill. Police officer AS gave evidence that he was attending the first crash, a collision between a light diesel truck and another vehicle, on the corner of Z Street and W Suburb, when he was called to Ms GS's crash, and that this was within 15-20 minutes of the first crash. He thought the police had called SHH some time after the first crash, but could not recall whether he or his sergeant made the call or how long after the first crash the call was made. Unfortunately HSG's records were unhelpful as they appeared to be inaccurate: there was no record of any call about incidents in the area until the afternoon, long after the trucks had already responded.

[8] The trucks arrived to clean up the spill within around 29 minutes of Ms GS's crash. Therefore SHH/HSG's total response time was anything up to a maximum of around 49 minutes, but may have been less depending on when it was notified. There is insufficient evidence to determine the actual response time, but even if it was 49 minutes, it is doubtful whether it could be considered so slow as to be a breach of the duty of care. Officer AS said he was not personally aware that the first crash had caused a fuel spill until Ms GS's crash. Therefore SHH/HSG probably did not know that there was a high-risk hazard until after the second accident occurred, and the response time was probably reasonable in the circumstances.

[9] Furthermore, even if the applicants could prove that the actual response time was too slow, they would also have to prove that the delay caused Ms GS's crash, in other words that a proper response time would have been soon enough to prevent the crash. Even if calling SHH/HSG was the first thing the police did when they arrived on the scene of the first crash, it would not be reasonable to expect that SHH/HSG should have responded within 15-20 minutes, in time to prevent Ms GS's crash. Therefore SHH/HSG can have no liability for Ms GS's crash, and the applicants' claims against SHH and HSG must be dismissed.

*Did SGA Ltd cause further damage by negligent towing?*

[10] Mr GS gave evidence that the front wheel was still attached when the car was initially loaded onto the tow truck, but that by the time the vehicle was stored at SGA Ltd's yard, the lower arm holding the wheel was broken resulting in the wheel being separated from the car,

and the CV joint was also broken. He believed that the damage was done by SGA Ltd while unloading the car at its tow yard, and gave evidence that he observed SGA Ltd being unduly rough (in his words “barbaric”) when it later delivered the car to their house.

[11] However, I am unable to conclude that the further damage resulted from unduly rough handling rather than merely being the result of moving an already-damaged vehicle. There is insufficient evidence that SGA Ltd was negligent in its handling of the vehicle, and therefore the claim against SGA Ltd must also be dismissed.