



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 518

APPLICANT HD

APPLICANT NC

RESPONDENT WD

**APPLICANT'S X Ltd
INSURER**

**RESPONDENT Z Ltd
INSURER**

The Tribunal orders:

The claim is dismissed.

Reason

1. This is a continuation of the matter having been adjourned in May 2023 for further evidence.
2. It is important to set out the history of how the claim came to be in the Tribunal because, while there is nothing unusual about the collision, there is an issue to be resolved about the applicants claim against the respondent.
3. The starting point is the respondent's liability to the applicants for loss or damage to their car. The tort remedy is to put the applicants in the position they would have been in had the loss or damage not happened. The applicant's say the car was worth \$12,600 based on [online] listings and a price guide of between \$8,250 and \$12,600. There is also a reference to a pre accident value of \$11,000 in an email between the insurers, though no evidence of where that figure came from. This gives a starting point of somewhere between \$8,250 and \$12,600 for the pre accident value of the car.
4. We know a quote for \$6,506.07 was provided to repair the car. The usual practice is that if the cost to repair is lower than the pre accident value the car would be repaired, and the amount of the repair would be claimed from the at fault party. There is no reason to doubt the car could have been repaired for this amount had the repairs been undertaken. This is where things got tricky.
5. The applicant's car was insured with X Ltd for a sum insured value of \$5,850.00. This means should the applicant make a claim for loss or damage to the car the most X Ltd would pay out is the sum insured. And because the sum insured, being X Ltd's liability to the applicants under the insurance policy, was less than the cost to repair X Ltd elected to pay out the sum insured, which they were entitled to do. There is an email from X Ltd to Z Ltd advising X Ltd has sold the damaged car for salvage of \$3,050. The applicants say they have not received this so it must have been kept by X Ltd.

6. What then is the respondent's liability? Applying the tort remedy the respondent is liable to the applicants for the cost to repair the car, not the pre accident value of the car. This is because the respondent's liability does not increase because of any contractual arrangement between the applicant and their insurer. The car could have been repaired for \$6,506.07, that it was not because of the sum insured and/or the salvage of the car are matters between the applicants and their insurer. The respondents insurer has paid the applicants insurer \$6,506.07 discharging the respondents liability to the applicant.
7. For this reason, the claim must be dismissed.
8. Finally, all parties attended the hearing other than X Ltd.

Referee: P McKinstry
Date: 25 October 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>.