



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 53

APPLICANT **HH**
RESPONDENT **NC**
APPLICANT'S **J Ltd**
INSURER

The Tribunal orders:

NC is to pay J Ltd \$2,858.19 on or before Wednesday 20 March 2024.

Reasons:

1. On 25 January 2023, there was a collision between HH's [ute] and NC's campervan on a bridge on the [highway]. The collision occurred when NC tried to move from the right-hand lane into the left-hand lane in which HH was travelling. The impact caused damage to the front right corner of the ute and the rear left side of the campervan.
2. HH and his insurer J Ltd now claim the cost of repairs to the ute of \$2,858.19. There were no uninsured losses.
3. The issues to be determined are:
 - a) Who was responsible for the collision?
 - b) What sum, if any, is NC liable to pay?

Who was responsible for the collision?

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.
5. NC gave evidence that he indicated left to show his intention to change lanes, but hesitated because the ute was too close. He then accelerated to try to get ahead of the ute, and tried again to merge with the expectation that HH would make room for him. He said that he crossed over the white dotted lines but there was no longer adequate space, so he hesitated again about half a metre away from the ute. He claimed that the ute had plenty of space on its left, but that HH started to steer rightwards towards the van in an attempt to push the van out of the lane, resulting in the collision.
6. However, HH denied trying to push the campervan out of the lane or turning sharply right. He said he was being pushed leftwards to avoid NC but did not want to hit the side of the bridge so had to turn the wheel slightly rightwards to maintain a straight line. A witness, Mr N, who was travelling in the right-hand lane and saw what happened, supported HH's account that NC tried

to merge when there was not enough space, and was pushing the ute into the barrier. NC made a lot out of the fact that Mr N could not see HH's front right wheel, but this is of little importance since Mr N saw the movements of the two vehicles, and did not support NC's account of HH swerving into him.

7. LT Rule 2.3(2)(b) provides that a driver must not move from a lane until he or she has first ascertained that the manoeuvre may be made safely. LT Rule 4.2(2) provides that a driver changing lanes or about to change lanes must give way to any vehicle not changing lanes. Giving way involves making sure that the other driver does not have to do anything to avoid a collision, such as slowing down or swerving.
8. By crossing the white lines into HH's lane, NC broke both of these rules, and I find that these actions caused the collision. The evidence does not support NC's claim that HH deliberately steered rightwards into him, and I accept HH's account that any rightwards correction on his part was merely an attempt at evasive manoeuvres, having been placed in a hazardous situation by NC.
9. By moving from his lane without due care and failing to give way, NC breached his duty as a driver to take care not to harm anyone else's property, and is responsible for the damage caused.

What sum, if any, is NC liable to pay?

10. I find that the repairs claimed for damage to the ute are supported by the invoices provided and are consistent with the description of the collision, as only damage to the front right corner of the ute has been repaired. I also find that the costs of repair are reasonable as they have been approved by an insurance assessor.
11. Accordingly, NC is liable in negligence for the costs of repairs to the ute of \$2,858.19.

Referee: E Paton-Simpson
Date: 29 February 2024



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 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>.