



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 192

APPLICANT I Ltd

RESPONDENT XN

The Tribunal orders:

XN is to pay I Ltd \$30,000.00 on or before Friday 5 May 2023.

Reasons:

1. On 30 July 2020, XN purchased a [redacted] vehicle from I Ltd for \$34,100.00. The vehicle was purchased on finance and as part of the sale XN used the services of I Ltd to broker insurance with [insurance company] on her behalf. One month later XN was rear ended and the car was significantly damaged. She is a salesperson and relies on her vehicle for her work. She returned to I Ltd and an agreement was reached whereby I Ltd would purchase the car off XN for \$32,000 and go through the process of the repairs with the insurer. With the money, I Ltd paid off the finance which XN had secured against the car, and the balance was put towards a replacement vehicle (with the balance funded by a loan).
2. The vehicle, however, was not repaired as anticipated by the parties. Instead, it was discovered that it had suffered structural damage and it was uneconomic to repair. [insurance company] wrote off the vehicle and deposited \$36,000 into XN's account, although by that time I Ltd were the registered owners of the vehicle. [insurance company] arranged for the vehicle to be scrapped, and I Ltd has not received any of that residual value. I Ltd claimed to be compensated for \$30,000 of the money XN received from her insurer.
3. The issues to resolve the claim are:
 - (a) Did the parties enter into an agreement that I Ltd would purchase XN's damaged vehicle on the understanding that it would receive either the insurance pay out for the vehicle, or the insurer would perform the repairs?
 - (b) If not, has XN been unjustly enriched by I Ltd repaying in full the finance for the vehicle?
 - (c) What loss can I Ltd prove it has incurred that it is entitled to be compensated for?

Did the parties enter into an agreement that I Ltd would purchase XN's damaged vehicle on the understanding that it would receive either the insurance pay out for the vehicle, or the insurer would perform the repairs?

4. On 1 September 2020, one day after the XN's car was damaged, she entered into a contract with I Ltd for it to purchase her damaged car for \$32,000. The vehicle was the security for a loan, which I Ltd settled for \$27,825.15. XN then purchased a 2019 model of the same vehicle from I Ltd. She paid

for the car by the difference between what I Ltd purchased her car for and what was owing, and the rest was funded by a loan.

5. When it was found that the vehicle was uneconomic to repair, [insurance company] offered XN \$36,000 to settle her insurance claim, which XN accepted. On 19 November 2022 [insurance company] paid XN \$36,000.
6. XN considered that she was the owner of the vehicle at the time of the collision and therefore she was entitled to the insurance payment. She said she had never been provided with any paperwork or provided with a written contract. XN considered she could rely on [insurance company] paying her and not the insurance company as being correct, because it, as well as I Ltd, are experienced professionals who know what they must do and need to get matters like this right. As the owner of the policy she considered it was her right to receive the benefit of the damage caused to her car while she owned it.
7. I agree with XN that an insured is entitled to the proceeds of a settlement with the insurer, however, in this case the issue is whether XN sold her car to I Ltd on the understanding that I Ltd would receive any benefit from the insurance for the vehicle. XI, representing I Ltd, said that both parties presumed the vehicle could be repaired, however, it would take months. She said that I Ltd made the offer to help XN as she desperately needed her vehicle. XI and IP considered that XN's vehicle was only worth \$32,000 to I Ltd **after** it had been repaired. XN agreed that if the vehicle had been repaired, then her insurer would have paid for those repairs and the value of those repairs would pass to I Ltd because it owned the car.
8. I find that if I Ltd was entitled to the value of the repairs, it was also entitled to receive the value of the vehicle if the insurer elected not to repair it. I agree with I Ltd that its decision to purchase the damaged vehicle for \$32,000 must have occurred on the promise that it was to obtain the benefit of the insurance for the vehicle. The vehicle only had a scrap value, and without the implied promise that I Ltd would get the benefit of the insurance, it made no sense for it to pay \$32,000, as though it had already been fully restored.
9. I therefore find that XN entered into a contract with I Ltd that it would purchase her damaged vehicle on the understanding that it would receive the benefit of the insurance claim. Although the contract is not in writing, nevertheless, it does not need to be in writing in order to be enforced.
10. As I have found that XN breached the contract she made with I Ltd to pay to it any benefit she received from the insurance policy, I do not need to consider the alternative issue of whether XN was unjustly enriched.

What loss can I Ltd prove it has incurred that it is entitled to be compensated for?

11. I Ltd considered that it was entitled to receive the \$32,000 it paid to XN, however, it acknowledged the monetary jurisdiction to the Tribunal was limited to \$30,000 and so abandoned the portion of its claim above that amount. I am satisfied that I Ltd has proven it is entitled to be paid the full amount of its claim.

Conclusion

12. As I Ltd has proven it is entitled to be paid the money XN received from her insurer, an order is made that XN refund it \$30,000.

Referee: K Cowie DTR

Date: 18 April 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>.