



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 585

APPLICANT **IU**

RESPONDENT **TS**

APPLICANT'S **JK Ltd**
INSURER

The Tribunal orders:

TS is to pay directly to JK Ltd the sum of \$10,507.46 on or before 29 November 2023 or such further time as agreed by IU's insurer.

JK Ltd is to refund to the applicant \$400, the insurance excess from the first monies received, or earlier at its discretion.

Summary of Reasons:

- [1] The hearing was convened by teleconference. All parties appeared at the hearing.
- [2] TS confirmed she has not filed a counterclaim.

Is the respondent liable for the collision of 14 December 2022?

- [3] The applicant claims that on the above date he was traveling along [road] in the right-hand lane approaching the [retail store] area intersection. The applicant then crossed the flush medium and entered into the right hand turn only lane intending to turn into the carpark. The respondent was traveling in the same lane ahead of the applicant. The respondent then also turned into the right hand turn only lane colliding with the left front of the applicant's vehicle.
- [4] The respondent admits the collision and the position of the vehicles before the collision. However, the respondent claims the applicant is liable for the collision as he entered the right turn lane from the flush medium before he was entitled to do so and must have been speeding as she did not see his vehicle in the right turn lane before she entered that lane herself.
- [5] Both drivers have explained essentially the same situation. The respondent admits she was ahead of the applicant in the right-hand lane. Both drivers confirm they were entering the new right turn only lane. The only dispute is who had right of way.
- [6] The applicant and his insurer claim the respondent is liable as she negligently pulled into the turn only lane without ensuring this manoeuvre could be carried out safely.

- [7] The respondent claims she had right of way because the applicant had no legal right to use the flush medium before entering the turn only lane. Further the respondent claims the applicant was speeding.
- [8] This dispute highlights drivers' obligations with regard to flush mediums. Despite the respondent's belief to the contrary a driver is not prohibited from driving on a flush medium. The position is that a driver must not pass or attempt to pass on the right of another vehicle moving in the same direction when...approaching or passing a flush median, *unless* the driver... intends to turn right from the road marked with the flush median into another road or vehicle entrance.
- [9] The essential question raised by the respondent is whether a driver is entitled to drive along the flush median. The answer is they may, if they intend to turn right from that flush median regardless of whether it then becomes a turn only lane, but only if there is no break in the flush median before the driver intends to turn, such as a break for an intermediate road on the right. In other words, to give a driver a right to pass along the flush median, it must be continuous to the place the driver is intending to make his turn. There is no statutory limit on the distance that may be travelled on a continuous flush median.
- [10] The Tribunal must of course, still consider the other aspects of negligent driving. I have had regard to the respondent's claim that the applicant was speeding. The Tribunal is required to apply an evidential standard. The burden is on her to prove this allegation on the balance of probabilities. The respondent has not provided any evidence to support this claim admitting that she did not see the applicant before the collision and therefore has no basis on which to assess his speed. On the evidence presented to the Tribunal the respondent has not met the burden of proving on the balance of probabilities that the applicant was driving in other than a reasonable and prudent way. It is equally if not more likely that the respondent simply did not see the applicant before changing lanes even though the applicant was undoubtedly in the right turn only lane given the resulting collision.
- [11] Therefore, the respondent's defence must fail. The applicant was entitled to be travelling along the flush medium before making his turn, for as long a distance as the flush medium remains unbroken. The responsibility lies with the respondent to not to enter the same lane until the way is clear to do so.

What are the reasonable costs of remedy?

- [12] I have carefully considered the evidence regarding the amount claimed as damages. The applicant's vehicle has not been repaired and has been sold with a salvage value realised of \$2,061. I accept the pre-accident value of the vehicle as assessed by [redacted] is \$15,000 and that this amount is more than the estimated cost of repair, \$10,507.46. As the estimated cost of repair is less than the pre accident value minus the salvage, \$12,939, the respondent is liable for the lesser amount.
- [13] I am satisfied the damage is consistent with the description of the collision and the compensation claimed is reasonable given the nature of the damage and the pre-accident value of the applicant's vehicle.

Referee: Hannan DTR

Date: 8 November 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 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>.