



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 364

APPLICANT JD

RESPONDENT SL

The Tribunal orders:

SL is to pay JD the sum of \$4,195.00 on or before 10 August 2023.

Reasons:

1. JD's friend, SL, was visiting [City]. JD picked SL up in her car and they decided to go for a drive. JD was tired and so asked SL to drive the car.
2. They drove to the [look out], where both fell asleep for some time. They woke around 2am, and decided to go home. SL was still driving and JD fell asleep again.
3. JD was awoken by a crash. SL had driven her car into two cars parked on the side of the road. JD and SL got out and rang the police as JD was concerned about the damage to the petrol line of one of the cars. At this point SL told JD that he did not have a driver's licence.
4. JD's car was not drivable and was towed away by [towing company]. The car was written off. Although JD's car was insured for \$5,000.00, the insurance company would not accept a claim as the damage occurred while the car was being driven by an unlicensed driver.
5. SL accepted liability for the damage and agreed to pay for it at a sum of \$85.00 per week. He paid a total of \$425.00 before payments stopped and communication ceased.
6. JD now claims \$5,500.00 from SL comprising of the loss of the insured value of the car (\$5,000.00); \$280.00 towing fee and \$180.00 Tribunal filing fee.
7. The matter was set down for hearing at 9.15am on Thursday 20 July 2023. Despite several attempts to contact SL on the telephone number provided to the Tribunal (and which the Tribunal had previously used to speak to SL) there was no answer from SL and the hearing went ahead without him.
8. The issues I have to consider are:
 - a. Did SL cause the damage by failing to take reasonable care?
 - b. If so, what is the appropriate remedy?

Did SL cause the damage by failing to take reasonable care?

9. The relevant law is the law of negligence. Drivers must take care not to drive in a manner that causes damage to another vehicle.

10. I find that SL failed to take reasonable care. I say that because he hit two stationary cars that were parked on the side of the road. SL was driving and should have driven in a manner so that he could avoid hitting other cars.
11. JD said SL told her he had blacked out or possibly fallen asleep again. While that might explain why the collision occurred, it does not excuse the conduct. Clearly SL failed to take reasonable care not to hit another vehicle while driving.

If so, what is the appropriate remedy?

12. A person who carelessly damages another person's car must pay the cost of putting the other person back into the position they would have been in had the damage not occurred.
13. I accept the car was unable to be repaired. JD's sister, who dealt with [towing company], gave evidence to the Tribunal that once the car had been towed, an independent assessor looked at the car and concluded that a part of the car that had been damaged was unable to be repaired. In light of this, the car as a whole was assessed as a write-off.
14. In the absence of any evidence to the contrary I also accept that the car was insured for \$5,000.00 and that that is a reasonable estimate of its value.
15. At the beginning of the hearing JD claimed \$280.00 for towing the car away from the scene of the collision. She explained that this figure had been off-set by what had been recovered for the sale of the wreck, which [towing company] had overseen.
16. However, JD was able to get further information from [towing company] during the hearing. This indicated that the towing fee was \$920.00, and the sale of the wreck was \$1,300.00. This means JD did not have to pay anything for towing the car, but instead received \$380.00 from [towing company]. This \$380.00 needs to be deducted from the figure of \$5,000.00 that SL must pay.
17. It is also necessary to deduct the figure of \$425.00 that SL has already paid. That leaves a figure of \$4,195.00 that SL must pay JD to put her back in the position she would have been had the damage not occurred.
18. JD also claimed the cost of filing the claim in the Disputes Tribunal. However, s 43 of the Disputes Tribunal Act 1988 states that costs such as these shall not be awarded against a party except in certain specific circumstances. None of those circumstances are present in this case, and so costs cannot be awarded.

Referee: Souness - DTR
Date: 20 July 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>.