



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 492

APPLICANT JN

APPLICANT TN

RESPONDENT CI

APPLICANT'S W Ltd
INSURER
(if applicable)

The Tribunal orders:

CI is to pay W Ltd \$20,726.62 by Wednesday 1 November 2023.

Reasons:

1. JN, TN and BC from W Ltd attended the hearing by teleconference, as did CI and his mother, ML, as his support person.
2. On 11 June 2022 JN and CI were involved in a collision at [Road 1], [City].
3. JN and TN claim \$20,726.62 for the cost of repairing their [vehicle].
4. CI disputed who was at fault for the collision.

Did CI cause the collision and damage to the [vehicle]?

5. The relevant law is the law of negligence. Drivers must take care not to drive in a way that causes damage to other vehicles or property. The Land Transport (Road User) Rule 2004 ("LTR") explains the rules that apply to all drivers.
6. Rule 5.9 of the LTR provides that a driver must not follow behind another vehicle so that the driver cannot stop the driver's vehicle short of the vehicle ahead if the vehicle ahead stops suddenly. Drivers are to be not less than 24 metres behind another vehicle if their speed is 60 km/hour or more but less than 70 kms/hour, and further behind if going faster.
7. Rule 4.1 of the LTR provides that a driver approaching or entering a place controlled by a give-way sign must give way to approaching traffic moving in the same direction as the driver, that is not controlled by a give-way sign.
8. JN said he came to the intersection of [Road 2] and [Road 1] and signalled to turn left onto [Road 1]. He maintained he looked to his right at the intersection and saw a vehicle coming towards him which was around 300-400 metres away. He believed he had sufficient time to join

the flow of traffic, so he turned left onto [Road 1]. He said he drove about 100 metres approximately at around 40-50 km/hour, during which time he said he started indicating to turn right, and then went to turn right into a driveway at [Road 1], [City]. It was at that point that the right side of his car was hit by CI's vehicle.

9. CI said he was driving two cars behind JN's [vehicle] along [Road 1]. He questioned why JN would have turned left onto [Road 1] seeing traffic coming towards him, when he knew he was going to turn right only a very short distance after the intersection. He believed JN should have given way to the oncoming traffic along [Road 1], as there was a give-way sign at the intersection of [Road 2]. CI explained that he and the vehicle in front of him both slowed down to accommodate JN joining the traffic on [Road 1] from [Road 2] and then the traffic all sped up again, before, unbeknownst to him, JN went to turn right. He said he could not see JN indicating right, as the vehicle in front of him blocked his view. CI said the vehicle in front of him braked heavily and veered to the left and he subsequently also braked hard and veered to the right to avoid the vehicle in front of him. In veering right, he said his vehicle then collided into JN's [vehicle] turning right. He thought he was about one car's length behind the vehicle in front of him when he braked and that he had been likely going around 65 kms/hour at that point.
10. W Ltd called two witnesses – NS and MN. MN is JN's daughter-in-law and was in the house at [address] at the time of the collision. She said she saw JN indicating to turn right into her driveway and then did not see the collision but heard a bang. She thought her house was about 100-200 metres from the [Road 2] intersection.
11. NS, who did not know any of the parties involved, was driving on the opposite side of [Road 1] coming towards JN. He said he saw what he later discovered was CI's vehicle overtake another car, drive very fast and then go to also overtake JN's vehicle. NS said he had ascertained that CI's vehicle was going so fast it was going to crash so, as he had his own family in his vehicle, he pulled over to the side of the road, about 300 metres from where the impact occurred, to avoid his family being involved in any crash. NS said he saw JN indicate to turn right. NS confirmed he assisted the parties at the scene as JN had his grandchildren in the car and CI was in his vehicle with a woman.
12. Based on the evidence outlined above, I find it more likely than not that JN moved into the traffic flow on [Road 1] through the give-way sign appropriately, as the two vehicles coming towards him were able to slow down sufficiently to accommodate him entering the traffic there. I find it more likely than not that the two vehicles behind JN had not slowed sufficiently to be able to stop short of JN were he to stop suddenly however, as per Rule 5.9 of the LTR. Further, CI said he was one car's length behind the vehicle in front of him when he went to brake, which would be around 4.5 metres approximately, but was going around 65 km/hour at that point. I find this to be in breach of Rule 5.9 of the LTR also, which provides he should have been not less than 24 metres behind the vehicle in front of him, going at that speed. Therefore, I find it more likely than not that CI caused the collision. The collision caused significant damage to the right side of JN's [vehicle].

Are the costs claimed reasonable?

13. If a party breaches a duty owed to another, and causes damage, they must pay the cost of putting that person into the position they would have been in had the breach not occurred.
14. I find that the costs claimed are reasonable. They are proved with appropriate documents and invoices and are consistent with the nature of the damage.

Referee: C Price
Date: 5 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>.