



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1390

APPLICANT **KB**

RESPONDENT **MY**

APPLICANT'S **J Limited**
INSURER
(if applicable)

The Tribunal hereby orders:

Mr MY is to pay the sum of \$11,891.60 (including \$700.00 insured loss) directly to J Limited on or before 19 June 2019.

(I note that the contents of Mr Y's counter-claim were heard at today's hearing even though it does not appear to have been formally lodged – I am not requiring it to be formally lodged because of the liability finding made in this decision)

Reasons

1. Ms B and Mr Y were the drivers involved in a collision on N Rd in May 2018. They had both been travelling north-bound with Mr Y's intended destination a construction site on the right-hand side of the road.
2. Ms B says Mr Y's vehicle was stationary on the left-hand side of the road as she approached, travelling north. She says Mr Y started to pull to the right as she approached and she tooted and swerved but he did not stop and the vehicles collided, with the major point of impact being to the left front corner of her vehicle, and damage extending the full length of the left side of her vehicle.
3. Mr Y says that he was stationary in the flush median directly opposite the driveway of the construction site he was entering when Ms B came from behind, overtook him on the right and collided with the right front corner of his car.
4. Ms B and her insurance company lowered their claim slightly at the hearing today to \$11,891.60, being the loss after her vehicle was deemed uneconomic to repair.
5. Mr Y claims \$3010.70 for the repairs to his vehicle (although it does not appear that his counter-claim was formally lodged with a filing fee paid) – the hearing proceeded on the basis

that the content of both claims was heard in full and the counter-claim filing fee could be paid if the finding of liability was partially or fully in Mr Y's favour.

6. The issues to determine are:

- Was Mr Y moving from a stationary position at the left-hand side of the road or was he stationary in the flush median at the point of impact?
- What is the liability in negligence of each driver?
- What reasonable losses were suffered by each driver?

Was Mr Y moving right from a stationary position at the left-hand side of the road or was he stationary in the flush median at the point of impact?

7. I find, on the balance of probabilities, that Mr Y had moved to the right from a stationary position at the left-hand side of the road as Ms B contends, immediately before the impact.
8. In making this finding I place no weight on the police traffic crash report which reports Mr Y as saying that he had tried to do a U-turn and collided with Ms B's Holden. Mr Y refutes that, and I accept that because he speaks no English and was using a translation app to communicate with police about the incident, that his statement may well have become 'lost in translation'.
9. I also place no weight on the statement of Mr Y's witness, Mr K, because Mr K acknowledged at the hearing today that he "had not been looking in the direction of Mr Y's car the whole time because he did not expect an accident to happen" and that he "didn't see exactly at the point of collision". Ms B points out that she did not see Mr K at the scene and that no-one from the construction site, where Mr K worked with Mr Y, approached them after the impact even though it was more than a minor collision, with Ms B's airbags being activated.
10. Based on Mr K's answers to questions at the hearing, I am not persuaded that he has seen all that he has reported in his written statement – he was not able to give an account of Ms B's movements leading up to the collision except to say that she hit the front part of Mr Y's vehicle. If Ms B had made the unusual manoeuvre that would have been required if events had unfolded as Mr Y contends, I would expect such a manoeuvre to be particularly memorable, and therefore a prominent part of any witness' description of events.
11. The evidence that was most significant in making the above finding of fact was the location of damage on both vehicles. The fact that there was no rear damage to Mr Y's car and that the main point of impact was the left front corner of Ms B's vehicle means that, if Mr Y had been stationary in the flush median as he says, Ms B's vehicle must have overtaken him to the right. This would be unusual in itself when the road ahead in her original lane was clear, but not only that, then Ms B would have had to pull back to the left directly into Mr Y's stationary vehicle. Such a combination of manoeuvres is highly improbable, and so specific that they would almost have to be deliberate. Even if such a manoeuvre were achieved, it is unlikely that it would leave the trail of damage extending from the front left corner down the entire left side of Ms B's vehicle, which is much more consistent with both vehicles having been moving at the time of the impact.
12. Ms B says that the damage extends down the left side of both cars because Mr Y kept moving to the right after he pulled out from a stationary position at the left-hand side of the road and she swerved to the right to try to avoid him so they were effectively moving on an angle together. As this version of events is consistent with the location and nature of the damage to both vehicles and Mr Y's version of events is not, I accept that Mr Y had been stationary on the left-hand side of the road initially, and pulled to the right into Ms B's path from a stationary position.

What is the liability in negligence of each driver?

13. Based on the above finding of fact, I find that Mr Y has breached his duty of care to Ms B by failing to give way when moving from a stationary position at the side of the road. Ms B had the right of way in this situation as she was travelling straight ahead in her lane. There is no contributory negligence on the part of Ms B.

What reasonable losses were suffered by each driver?

14. Due to the finding that Mr Y is fully liable for the collision, only Ms B's losses are considered.
15. Ms B's insurer has provided evidence that the cost to repair the damage to her vehicle resulting from this collision was in the vicinity of \$27,000 - the vehicle, a 2007 Holden Rodeo Ute, was therefore deemed uneconomic to repair.
16. The lesser costs of the pre-accident value of the vehicle, being \$15,000.00 plus towing fee of \$230.00, plus assessment fees of \$140.00, minus salvage value of the wreck of \$3618.40, are claimed, a total of \$11,891.60.
17. As supporting evidence for all these amounts has been provided, the claimed amount is accepted and Mr Y is liable to pay \$11,891.60 to J Limited.

Referee: J Perfect
Date: 29 May 2019



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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.