



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 287

APPLICANT KB

RESPONDENT OS Ltd

**SECOND
RESPONDENT** LP

RESPONDENT J Ltd
INSURER
(if applicable)

The Tribunal orders:

1. The claim is dismissed.

Reasons:

1. On the late evening of 14 July 2021 KB was driving his car on [Street name] in [Suburb] when he was involved in a collision with a van driven by LP. KB seeks an order that LP was responsible for the collision and is liable to pay for the damage to KB's car, which he says is \$6,901.00 together with the filing fee for this claim which is \$180.00. KB also seeks an order that OS Ltd who are LP's employer, are vicariously liable for the damage to KB's car.
2. The issues to be resolved are:
 - a. Did LP cause the collision?
 - b. If so, are OS Ltd vicariously liable for the damage caused to KB's car?
 - c. Are the costs claimed proved?
3. OS Ltd's insurer, J Ltd, did not attend the hearings of this claim, but OS Ltd advised that J Ltd were aware of the claim.

Did LP cause the collision?

4. On the basis of the evidence available I am unable to make a finding that it is most likely that LP caused the collision.
5. The relevant law is the law of negligence. Drivers must take reasonable care in operating their vehicle and are responsible for reasonably foreseeable damage suffered by others as a result of a failure to do so.

6. KB says that on 14 July 2021, at around 10pm, he was driving on [Street name] in [Suburb] with two of his friends in the car. He says he was involved in a verbal altercation with a pedestrian at a pedestrian crossing. KB says that the pedestrian then got into a van and followed his car. KB says that driver of the van later passed his car, performed a u-turn and drove towards KB's car.
7. KB says that he pulled his car over to the side of the road in an evasive way, and the driver of the van drove into the right hand side of KB's car, causing damage to the car. KB says that the occupants of the van opened their doors, as if to get out of the car. KB says he was very scared for his safety and drove away, which caused some further damage to his car because the van was touching his car.
8. KB did not know the name of the driver of the van, but says the van had the name "OS" on it. KB reported the incident to the police. It does not appear that the police have taken any action. KB also contacted OS Ltd, who advised him that the driver of the van was LP.
9. LP has a different recollection of the events. He says that he was approaching a pedestrian crossing to cross the road with his two apprentices when KB's car drove very fast towards them, only just stopping before the crossing. LP says that he told the driver to slow down through the driver's open window, and the parties had a verbal exchange. LP says that he and his apprentices then got into his work van and drove south on [Street name].
10. LP says he saw KB's car parked on the side of the road and turned around and pulled up alongside KB's car intending to speak to him about his driving at the pedestrian crossing. LP says that he did not open his door or make to get out of his van. He says that his van did not hit KB's car.
11. LP says that KB then tried to drive off but in doing so without hit the back of the driver's side of LP's van. LP says that after the incident he called the police and reported the incident.
12. There were witnesses to the collision. One of KB's passengers BL, supported KB's account of the collision, and said that the van driven by LP hit the side of KB's car. BL was unable to say which part of LP's van hit the side of the car because he said it all happened very quickly.
13. One of the passengers in LP's van, QD, also gave evidence, which supported LP's account of the collision. QD said that LP's van did not hit KB's car, but rather pulled up alongside KB's car, and then KB caused the collision by driving away, and hitting the back of the van as he did so.
14. Each party has provided photos of their vehicles. The photos of KB's car show damage on the front side panel of the car, just behind the wheel, and then more damage on the driver's door and the right rear door of the car. KB says that the damage on the front side panel behind the wheel is an impact dent from when LP hit the side of the car, and the other damage is from KB driving away and hitting the back of the van.
15. There are also photos of the van, which LP and his employer say were taken the morning after the incident. These show no damage to the front and side of the van, but a small amount of damage to the back of the van, near the rear taillight. LP says this is where KB hit the van as he drove away. LP says that there is no damage to the front or side of the van because the van did not hit KB's car.
16. If I can be satisfied on the balance of probabilities that it is most likely that LP's van hit KB's car, then I would have little difficulty in making a finding that LP caused the collision.
17. However, the accounts of the parties and their witnesses of what happened are quite different and are not able to be reconciled. While witnesses can be useful in resolving the differing recollections of the parties about what happened, in this case the witnesses also have different recollections of what happened, each supporting the account of the driver of the vehicle they were in.
18. There is a police report of the incident. This says that the van drove into the [car model] (KB's car) at an angle, which supports KB's account of the collision. However, I consider it most likely that the police report documents KB's account of the collision rather than providing an independent finding of what happened. The police did not attend the scene of the collision but rather spoke to KB later

at another address. The police did not view the incident itself, and the police report records that there were no witnesses to the event. It appears that the police have not spoken to LP and so the police report does not take into account his account of the collision.

19. The photographs each party has provided are useful. The photo of the van shows no damage to the front or side of the van. I consider that it is most likely that if the van hit KB's car in accordance with KB's account of the collision, then there would have been damage on the front or side of the van. Given that there is no damage, I am unable to make a finding that it is most likely that the van hit KB's car.
20. KB suggested that the front dent on his car was clearly an impact dent from being hit by the van. However, given the lack of damage to the van, I consider that it is possible that the front dent on KB's car happened when KB drove away and hit the back of the van.
21. KB suggested that the van may have been repaired before the photos submitted to the Tribunal were taken and noted that the photos appeared to have been taken on a wet day, when the day after the collision was fine in [City].
22. OS Ltd said that the photos were taken the day after the collision at around 7.30am in the morning, as soon as they arrived at work and saw the damage. OS Ltd said that the photos were taken in [Suburb 2] at their yard, and that they cannot recall what the weather was like that day.
23. I have taken into account the suggestion that the photos of the van were taken later but am not able to make a finding that this is most likely to be the case. In these circumstances I am unable to make a finding that the van hit KB's car and thereby caused the collision.
24. KB suggested that even if I were not satisfied on the balance of probabilities that the van hit his car, that LP still caused the collision by performing a u-turn and driving over onto KB's side of the road in a threatening manner. KB says that he felt a real threat to his personal safety and felt he had no alternative but to drive away and could not avoid hitting the van, and that therefore LP caused the collision.
25. I have taken this argument into account in making my decision. Clearly the parties have been involved in a verbal exchange shortly before the incident. While it would have been preferable if after this, LP had driven on, rather than performing a u-turn and driving up to KB's car, I am unable to make a finding that this action was so unreasonable that KB was left with no alternative but to drive away, or that KB could not reasonably have avoided hitting LP's van as he did so.
26. For these reasons I am unable to make a finding that it is most likely that LP caused the collision. This means it is not necessary for me to consider the remaining issues and the claim is dismissed.

Referee: L Trevelyan
Date: 28 March 2022



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>.