



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2019] NZDT 1393

**APPLICANT**      KH

**RESPONDENT**    XS

**APPLICANT'S**    Z Ltd  
**INSURER**  
**(if applicable)**    HI

**APPLICANT  
(COUNTER-  
CLAIM)**

**The Tribunal orders:**

1. XS is to pay to Z Ltd the sum of \$3,191.22 on or before 30 September 2019.

**Reasons**

1. KH was proceeding down Witako Street when she struck the door of a parked car to her left. The car was owned by HI but had just been driven by XS. Both cars were damaged.
2. KH has insurance with Z Ltd (Z) (together referred to as the applicants). The applicants have filed a claim seeking the cost of repairing the damage to KH's car (\$3,191.22).
3. HI filed a claim seeking repair costs of \$3,000.00 to her car. However, as her car appeared to be written off, her claim was reduced to an agreed pre-accident value (\$1,700.00) less a notional value for the wreck (\$200.00), being \$1,500.00.
4. These costs were not disputed.
5. The issues to be resolved are:
  - (a) Did XS open the car door in a manner which created a hazard?
  - (b) If so, did KH contribute by failing to keep a proper lookout or driving too close to the parked cars?

### **Did XS open the car door in a manner which created a hazard?**

6. Rule 7.2 of the Land Transport (Road User) Rule 2004 states that a driver must not create a hazard by opening their door or leaving a door open.
7. KH recalled never seeing the car door until the point of impact, and therefore considered that XS had opened the door into her path just as she passed. If he had done so, then this would have been a breach of Rule 7.2. KH further states that she is obliged to keep as far left as practicable as required by Rule 2.1. That Rule states that a driver must at all times drive as near as practicable to the left side of their lane. As KH was already on the road, and parked cars must not create an obstruction with opening doors, there is an inference that the collision occurred as a result of a breach of Rule 7.2.
8. This inference can be displaced by evidence to the contrary but places an evidential onus on XS and HI to achieve this.
9. XS stated that he had already exited his car and had turned around and leaned back in to the car to reach across to the passenger side. On that basis, it is possible that the door would have been leaning up against his body and not open by much and would have been in this position as KH approached. XS and HI's both considered that KH was travelling too close to the parked cars and had failed to keep a proper lookout.
10. Photos were presented of the width of the road showing there was room to easily pass a parked car with the door open. XS and HI believed that where cars are parked, it is not practicable or prudent to drive as close as would have been required given the presence of parked cars and the small degree to which the door was open.
11. As there is a competing recollection of when and how the door was open at the time of the impact, I am unable to make a finding about whether XS was exiting his car or turning back in to the car. If it was the former, then the starting point was that XS was liable, but for any contribution for driving too close. If it was the latter, then it is possible that KH would be liable, because the incident might only have occurred by her failing to see an existing and avoidable obstruction ahead. However, this would only be the case if XS remained in position as she approached. If he was leaning in, but started to stand as she came past, the door could swing wider at that moment. Whilst XS came across as a credible witness, so too did KH. It was not possible to prefer one recollection over the other as to the exact timing of events.
12. The purpose, timing, and extent of the open door therefore remained unknown.
13. As XS had opened the door, the onus fell on XS and HI to prove that the opening of the door preceded KH's arrival and had not altered as the car passed. This onus was not able to be discharged.
14. Consequently, the starting point is that XS, having opened the door with oncoming traffic, was liable for what ensued.

### **Did KH contribute by failing to keep a proper lookout or driving too close to the parked cars?**

15. It follows from the above that I am unable to make a finding that KH failed to keep a proper lookout.
16. Had XS been leaning into the car, and not changed his position, he would have been in that position before KH arrived on the scene, and given the width of the road, it would have been possible for KH to drive past without hitting the door and stay in her lane. Photos showing the width of the road proved this point. However, if he moved back or stood up just as KH passed, this could have changed the angle of the door and surprised KH, who is entitled under the Road User Rules to be keeping as far left as practicable. Whilst there is a risk in driving close to parked cars, it can be considered practicable to do so on a busy street, and the risk of a collision as a result sits with the party that has opened the door.

17. Only the outside leading edge of the door was struck, which proved that the door was not fully open. However, depending on where KH was in her lane, this left a considerable range of opening distances. As the door could have been swinging back at the point of impact (whether or not XS was leaning in, depending on the exact timing of his movements) the point of impact in KH's lane was unknown. I have considered the placement of the damage on KH's car. This began slightly at the side. This was not determinative, as it could have occurred in this position regardless of her placement, given the position of the door was unknown.
18. For these reasons, I was unable to make a finding that KH had contributed, either from failing to see an obstruction ahead, or from driving too close.

### **Conclusion**

19. This was a difficult matter to determine given the competing recollections of the parties and the limited evidence available.
20. However, having had an open door in the path of oncoming traffic, there was an onus on XS to displace the inference that the door had been a hazard. As this was not possible on the evidence available, a finding has been made that he is liable for the damage that occurred.

**Referee:** J Robertshawe

**Date:** 20 August 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>.