



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 264

APPLICANT KW

RESPONDENT NX

The Tribunal orders:

1. NX is to pay KW \$510.00 on or before 11 July 2023.
2. The claim for the filing fee and hearing attendance costs of \$955.50 is dismissed.
3. The claim for medical costs of \$69.50 is struck out.

Reasons

1. On 8 March 2023 KW was stationary on his e-scooter, on the median strip on [Road 1] waiting to turn into [Road 2]. NX was on [Road 2] waiting to turn right into [Road 1]. NX turned into [Road 1] and collided with KW.
2. KW claims \$1,500 for the following;
 - a. Medical expenses \$69.50
 - b. Repair of his e-scooter \$430
 - c. Temporary transport costs due to the collision of \$240
 - d. Tribunal filing fee \$45
 - e. Time spent coming to the hearing and time away from work for KW and his support person \$715.50
3. NX did not attend the hearing or send any submissions in defence of the claim. NX has not been in contact with the Tribunal; however, I am satisfied that she was properly informed of the hearing date and time, and the matter could proceed in her absence.
4. The issues to resolve are:
 - a. Did NX fail to give way to KW when she drove from [Road 2] onto [Road 1], causing damage to KW's e-scooter? Is KW entitled to claim repair costs of \$430.00?
 - b. Is KW entitled to claim \$240.00 for temporary transport costs?
 - c. Is KW entitled to claim costs of \$45.00 for the filing fee, and \$715.50 for time attending the hearing for KW and his support person?
 - d. Does the Tribunal have jurisdiction to award medical costs of \$69.50?

Did NX fail to give way to KW when she drove from [Road 2] onto [Road 1], causing damage to KW's e-scooter? Is KW entitled to claim repair costs of \$430.00?

5. The law of negligence requires every driver to take care to drive in a manner that does not cause damage to other road user's vehicles or property. A driver turning into another road, from a stop sign must ensure the way is clear before they proceed and must give way to all road users using that road.¹
6. NX had a duty to ensure her pathway was clear and give way to all vehicles on [Road 1] before entering. I find that NX failed to give way when she entered [Road 1] and collided with KW causing damage to his e-scooter.
7. As the negligent driver NX is responsible for restoring KW to the position he was in prior to the collision. Based on the invoice provided, I am satisfied that the reasonable repair cost is \$430.00, therefore KW's claim for \$430.00 is proved.

Is KW entitled to claim \$240.00 for temporary transport costs?

8. The Tribunal can make orders for damage to property and related losses². KW says that he has had to rely on his family to pick him up and take him to the supermarket and medical appointments. His estimates that this has cost his family about \$20 per week for fuel for a period of 12 weeks, being a total of \$240.00. However, he has paid his family a total of \$40.00 for petrol to date. KW's daughter confirmed this was correct. KW has a duty to mitigate his losses. I would expect that a period of four weeks would be a reasonable time period for the e-scooter to be repaired. KW does not have any evidence to support his losses, therefore I must err on the side of caution. However, I accept KW's estimate of \$20.00 per week for petrol costs based on 1 – 2 trips to appointments. I allow four weeks at \$20.00 per week, being a total of \$80.00.

Is KW entitled to claim costs of \$45.00 for the filing fee and \$715.50 for time attending the hearing for KW and his support person?

9. Costs relating to filing fees and time spent attending the hearing are unable to be ordered unless the application is frivolous or vexatious, deliberately prolonged or the claim is filed knowingly in the wrong jurisdiction, or the matter originated in the District Court³. None of these situations apply here, therefore the claim for costs is dismissed.

Does the Tribunal have jurisdiction to award medical costs of \$69.50?

10. The Tribunal does not have jurisdiction to hear claims for damage arising directly or indirectly out of personal injury. The Injury Prevention, Rehabilitation and Compensation Insurance Act 2001 gives ACC exclusive jurisdiction over such claims⁴. Therefore, the claim for \$69.50 is struck out.

Conclusion

11. In conclusion, NX is ordered to pay KW \$430 to repair the e-scooter plus \$80.00 for replacement transports costs, giving a total claim proven of \$510.00.

Referee: Nigel Wolland

Date: 20 June 2023

¹ Rule 4.1 (a) and (b) of the Land Transport (Road User) Rule 2004

² Section 10(1)(c) of the Disputes Tribunal Act 1988

³ Section 43 of the Disputes Tribunal Act 1988

⁴ Section 317(1)



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>.