



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 260

APPLICANT LA

RESPONDENT KD

The Tribunal orders:

The claim is dismissed

Reasons:

1. KD's car hit the back of LA's car on a very rainy day when the traffic on [highway] was slowing down because of another collision ahead. LA seeks an order that KD is liable to pay for the damage to LA's car. KD says he did not cause the collision because a third car which was in the right hand lane hit the side of KD's car and caused KD's car to "sledge" into the back of LA's car.
2. The issues to be resolved are likely to be:
 - a. Did KD's driving cause the collision?
 - b. Are the costs claimed proved?

Did KD's driving cause the collision?

3. On the evidence available I am unable to make a finding that KD's driving caused the collision and so the claim is dismissed.
4. The law that applies is the law of negligence. Drivers must take reasonable care in operating their vehicle and are responsible for any reasonably foreseeable damage suffered as a result of a failure to do so.
5. The duty to take reasonable care includes a duty to follow the Land Transport (Road User) Rule 2004 ("the Rules"). Rule 5.9(3) provides that a driver must not drive on a road following behind another vehicle so that the driver cannot stop short of the vehicle ahead if that vehicle ahead stops suddenly.
6. This means that usually when a driver hits another driver from behind the first driver is at fault and will be liable for the cost of repairs for any damage to the car in front.
7. In this case the parties are agreed that KD was following LA's car in heavy traffic on [highway]. There was a collision up ahead and traffic in the left lane slowed to a stop. LA stopped his car safely. KD's car hit the back of LA's car. The impact was between the front right of KD's car and the back left of LA's car.

8. This would normally be a situation in which it would be quite easy to make a finding that it is more likely than not that the collision was caused by a failure by KD to follow at a distance and speed which meant he was able to stop safely when LA's car stopped ahead of him.
9. However, KD says that he was following at a safe distance and speed, and would have been able to stop safely, but another vehicle, a ute travelling in the right hand lane, skidded into KD's car and shunted KD's car into LA's car. KD says the driver of the ute did not stop and he was not able to get its number plate.
10. KD has provided the following evidence in support of what he says happened:
 - a. Photos of his car which show two distinct areas of damage. There is damage to the front right of his car – around the headlight and bumper, which he says is where his car hit LA's car. There is also damage on the right driver's side of KD's car. This is a large dent just in front of the driver's side door. KD says this is where his car was hit by the ute.
 - b. KD says that when he stopped after the accident the first thing he said to LA is that he had been hit by a ute which had caused the collision.
11. LA agrees that KD mentioned that he had been hit by a third party when they stopped after the collision. LA says he does not believe there was a third vehicle involved. He says:
 - a. That he only heard one bang at the time of the collision. He says if another car had hit KD's car he would have heard it but the only sound he heard was the bang of KD's car hitting LA's car;
 - b. That the damage on the side of KD's car could have happened before the collision. KD's car was unwarranted and had its registration on hold at the time of the collision. LA says this could have been because of pre-existing damage on the right side of KD's car.
 - c. That KD accepted responsibility for the collision on the side of the road after the collision and offered to pay for the damage to LA's car.
 - d. That if a third car was involved it could not have driven away because the traffic was slow for the collision ahead.
12. In response KD says:
 - a. His car was undamaged before the collision. He says he had been working on it which was why the registration was on hold, and he was on his way to get a WOF for it when the collision happened.
 - b. There was very heavy rain and some thunder and lightning at the time of the collision and so LA may not have been able to hear the initial collision between the ute and KD's car.
 - c. He disputes that he ever accepted responsibility for the collision or offered to pay for the damage to LA's car.
 - d. The traffic in the right lane was still moving after the collision and the ute was able to drive away while KD and LA were stopping their cars on the side of the road.
13. I have taken into account all of the available evidence. In this case I am unable to be satisfied to the required standard, the balance of probabilities, that KD's driving was the cause of the collision.
14. The photos of the damage to KD's car are consistent with there having been another impact, further back on KD's car from the impact with LA's car.
15. The impact between KD's car and LA's car was not straight on, but rather suggests that KD's car hit LA's car at a sharp angle (the front right corner of KD's car hit the back left corner of LA's car). This seems to me to be consistent with KD's account that his car was shunted sideways by an impact with another vehicle.
16. These factors, together with KD's immediate statement at the time of the collision that another car had hit his car is sufficient to introduce doubt as to whether KD's driving was the cause of the

collision. Having considered all of the evidence I am not able to be satisfied that it is more likely than not that KD's driving was the cause of the collision.

17. I have considered whether, even if a third party was involved in the collision, it might be possible to make a finding that KD must still have been following LA too closely or too fast and so must still bear some responsibility for the damage to LA's car. However, I have not been able to reach a decision that this is more likely than not either.
18. Given that I am unable to make a finding that KD's driving caused or contributed to the collision the claim must be dismissed.

Referee: L Trevelyan

Date: 8 June 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>.