



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

**District Court**

**[2023] NZDT 479**

**APPLICANT**            **LI**  
**RESPONDENT**        **T Ltd**  
**APPLICANT'S**        **X Ltd**  
**INSURER**  
**RESPONDENT'S**      **Y Ltd**  
**INSURER**

**The Tribunal orders:**

T Ltd, or its insurer Y Ltd, shall pay the Applicant \$4,700.00 by 27 July 2023.

**Reasons:**

1. The Applicant's vehicle was damaged beyond economical repair in a collision with T Ltd's truck.
2. The Applicant was driving behind the T Ltd road works truck through a 4-5 km stretch of road works, with a line of vehicle behind her.
3. At the end of the road works area and once clear of the road cones, the T Ltd pulled to the left side of the road and turned off its hazard lights. The road speed signage showed 100kms per hour speed limit resumed.
4. When the T Ltd truck pulled over and turned off the hazard lights, the Applicant accelerated to pass the T Ltd truck, as did the vehicle behind the Applicant and the large truck and trailer unit behind that vehicle.
5. As the Applicant came along-side the T Ltd truck, the truck turned on its right indicator pulled out to make a u-turn to return to the road works area to continue its work. The Applicant tried to take evasive action but could not avoid the truck, they collided and her vehicle ended up in the adjacent paddock.
6. T Ltd management denies their pulled over to the left and that due to the road works caution sign board on the rear of the T Ltd truck, the driver has limited visibility via the side mirrors only. T Ltd states that the road works zone had not yet ended, but provided no evidence of the road works zone or signage in relation to the accident site.
7. T Ltd's driver did not appear at the hearing nor make any written statement as to his version of events.

8. The issues are: Was T Ltd's driver negligent? Was the Applicant contributorily negligent? Is T Ltd liable for the loss of the Applicant's vehicle?

### **Was T Ltd's driver negligent?**

9. A finding of negligence requires that there be a duty of care, a breach of that duty and damage as a direct result of that breach. All drivers owe a duty of care to all other road users and adjacent property owners.
10. The T Ltd driver had been leading a line of vehicles through a very long stretch of speed reduced road works. The T Ltd driver having pulled off to the left and turning off the hazard lights is consistent with having reached the end of the road works as the Applicant claims. T Ltd has provided no evidence to the contrary.
11. The signage indicated the speed reduction zone had ended and the witness from the vehicle behind the Applicant's states he was also starting to accelerate to pass the T Ltd truck as did the truck and trailer unit behind him.
12. The T Ltd driver should have known there would be a long line of vehicles built up through the 4-5 km road works zone that would be ready to pass and resume open road speed.
13. The Tribunal finds that the T Ltd driver breached his duty of care by failing to consider the vehicles that had been following him and failing to check and ensure that it was safe before attempting a u-turn under those circumstances.
14. The Applicant's vehicle was along-side the T Ltd truck when the T Ltd driver started to turn, indicating he did not check his mirrors before starting his turn.
15. The damage to the Applicant's vehicle was a direct result of the T Ltd driver's breach of his duty of care.
16. Accordingly, the Tribunal finds that the T Ltd driver was negligent.

### **Was The Applicant contributorily negligent?**

17. T Ltd argues that the accident occurred within the road works zone and that the Applicant was barred from attempting to overtake approaching the t-intersection.
18. T Ltd did not produce any evidence to prove where the accident occurred in relation to the road works zone. No photos were taken, no measurements or any other documentation of the site and no first-hand evidence from the T Ltd driver.
19. The actions of the T Ltd driver and the following drivers prior to the collision indicate that the road works had ended and each driver was preparing to resume normal driving.
20. The Land Transport (Road User) Rule 2004 allows overtaking while approaching an intersection if it can be done without crossing the centre line or affecting the traffic from the side-road.
21. But for the T Ltd driver pulling left and then pulling out to make a turn to the right, without checking, the Applicant and the others would have safely been able to overtake the T Ltd truck on the right without crossing the centre line or affecting the side-road traffic, it there had been any.
22. Accordingly, the Tribunal finds that the Applicant was not contributorily negligent.

**Is T Ltd liable for the loss of The Applicant's vehicle?**

23. As T Ltd's driver has been found to have been negligent during the course of his employment, T Ltd, as his employer, is found to be vicariously liable for the loss of the Applicant's vehicle.
24. The pre-accident value of the Applicant's vehicle was approximately \$5,000.00 and the salvage value of the wreck was \$300.00, making the Applicant's loss \$4,700.00.

**Referee: L Mueller**  
**Date: 3 July 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>.