



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

**District Court**

**[2023] NZDT 386**

**APPLICANT MB**

**RESPONDENT TX**

**SECOND  
RESPONDENT EX**

**APPLICANT'S INSURER  
(if applicable) K Ltd**

**The Tribunal orders:**

1. EX is to pay the sum of \$6850.22 to K Ltd, as insurers for MB, by no later than 8 September 2023.
2. The claim against TX is dismissed.

**Reasons:**

3. MB was driving his car along [Street] on 22 January 2022. As MB passed a taxi stopped on the side of the road, the passenger in the rear of the taxi opened the right rear door. The door hit the left side of MB's vehicle causing damage.
4. At the time of the accident, the taxi had three passengers in the back seat. TX was in the centre paying the driver. EX was seated to the right of TX. The car door was opened by EX.
5. MB originally claimed in the Disputes Tribunal against the taxi driver. That matter was heard by another Referee. The claim was dismissed as the Referee found the taxi driver not liable for the actions of his passenger.
6. MB now claims in the Disputes Tribunal against both TX and EX. The issues to be determined are:
  - i. Was EX negligent when opening the car door? If so, is he liable to compensate MB for his losses?
  - ii. Is TX liable for the losses?

iii. Have the losses been proven?

***Was EX negligent when opening the car door? If so, is he liable to compensate MB for his losses?***

7. EX had a duty of care to ensure it was safe to open the taxi door. This duty of care is contained in Rule 7.2(1), Land Transport (Road User) Rule 2004, which states a person must not cause a hazard by opening a door of a motor vehicle.
8. EX states he opened the door as the taxi driver had said to get out. EX thought the taxi driver had parked safely, however he didn't realise how narrow the road was. In addition, his view of the road was obscured by a sticker on the rear passenger window.
9. In consideration of the duty of care, I find the prudent passenger would take more care to ensure it was safe to open the car door, either by checking through the rear window, or by waiting for passengers on their left to exit and then exit from that side. EX stated he believed fault lay with the taxi driver however I find responsibility lay with EX to ensure it was safe to open the door.
10. As EX failed to take reasonable action to ensure it was safe to open the door, in breach of Rule 7.2(1), I find he was negligent, and accordingly I find him liable to compensate MB for his losses.

***Is TX liable for the losses?***

11. TX was paying the driver at the time of the accident. She did not open the car door, nor did she instruct EX that it was safe to do so.
12. TX is not liable for the actions of EX. The claim against TX is accordingly dismissed.

***Have the losses been proven?***

13. The losses have been proven. Without evidence to the contrary, I accept the assessment of loss and the repair account as submitted by the insurer.

**Referee: K. Edwards**  
**Date: 16 August 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>.