



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

**District Court**

**[2023] NZDT 195**

**APPLICANT**      **MI**  
And Respondent  
for Counterclaim

**RESPONDENT**    **EG**  
And Respondent  
for Counterclaim

**RESPONDENT**    **Q Ltd**  
**INSURER**

**The Tribunal directs:**

1. The claim is dismissed.
2. MI is to pay Q Ltd \$6,444.92 on or before Monday 10 July 2023.

**Reasons:**

1. At around 8am on 22 September 2022, MI was indicating to turn right into his driveway. A van stopped in the lane of traffic to let him make that turn. As MI turned, he collided into EG who was riding his motorcycle in the cycle lane directly outside of MI's driveway. EG was knocked off his bike and suffered minor injuries. Both MI's vehicle and EG's motor bike were damaged.
2. When the matter was first called it was adjourned after hearing from the parties so that each could provide additional evidence. When the hearing resumed MI said he was unwell and asked for the hearing to be adjourned as he wished to attend in person. The hearing was therefore adjourned, however, when it reconvened, MI did not attend and did not answer his phone when I called him and twice left a message. MI also did not provide the evidence of the pre-accident valuation for his vehicle or any other evidence that he wanted to have considered. The hearing therefore continued in MI's absence.
3. The issues to resolve the claim are:
  - (a) Did EG breach his duty of care by passing on the left of a vehicle in a lane of traffic or by occupying a lane of traffic that was not available to him?
  - (b) If so, what reasonably foreseeable loss can MI prove he has incurred that he is entitled to be compensated for?
4. The issues to resolve the counterclaim are:
  - (c) Did MI breach his duty of care by failing to give way to EG?

(d) If so, what reasonably foreseeable loss can EG prove he has incurred that his insurer is entitled to be compensated for?

**Did EG breach his duty of care by passing on the left of a vehicle in a lane of traffic or by occupying a lane of traffic that was not available to him?**

5. The law of negligence imposes a duty on everyone to ensure that a person does not damage another person's property as a result of how they operate their vehicle.
6. A lane is defined in the Land Transport (Road User) Rule 2004 to include a cycle lane and a cycle is defined as a vehicle that is designed primarily to be propelled by the muscular energy of the rider and includes a power-assisted cycle. Rule 2.3(4) provides that a driver may drive in a lane that is unavailable to the driver if the driver does so to leave a road and gives way to vehicles entitled to use the lane. Rule 2.3(4)(b) provides that if a driver intends to turn across a lane that is unavailable to the driver, they may use that lane but must not exceed a length of 50 meters.
7. The Land Transport (Road User) Rule 2004 provides that a driver must only cross a cycle way after giving way to vehicles already using the lane. Regardless whether or not EG was entitled to ride in the cycle lane, MI needed to check that the lane was clear before he passed over it. A gap had been made in the traffic to allow MI to turn into his driveway. The reaction for a driver in MI's position is to take advantage of the gap and turn into the driveway. However, there is another lane of traffic that MI has to pass over before he can enter into his driveway. He must also check to ensure that the cycle lane is clear before he passes over it, regardless if the user of that lane is authorised to use it or not. On the facts of this case, I am not satisfied that MI adequately checked that the cycle lane was clear.
8. MI wrote in his claim that "I had no chance of seeing him as traffic was back to back", however, MI cannot proceed to cross a lane of traffic without first determining that it is not occupied and is a safe manoeuvre for him to make. MI provided a copy of a witness statement that stated EG rode his motorcycle in the cycle lane and passed her on her left just before she heard the collision. The witness did not provide her location relative to MI's driveway, but she was behind the van that made a gap for MI. EG was therefore in that lane of traffic to be seen, but MI did not adequately check the cycle lane because his view was blocked by the van. EG considered, however, that MI needed to check for motorcyclists in that lane as his driveway is within 50 meters of the intersection and so within the distance that a motorcyclist could lawfully use the cycle lane if they were to turn left at the intersection directly ahead, as EG was intending to do.
9. The primary duty in this case was on MI to check that the cycle way was clear before he crossed over it. In the situation MI found himself, that he could not look past the van that made way for him, I have much appreciation for the difficulty EG was in and how easy it would have been to cross the cycle path without adequately checking. However, the law provides that MI must check and as he failed to do so, I find that he therefore breached the duty of care that was required of him.

**What reasonably foreseeable loss can MI prove he has incurred that he is entitled to be compensated for?**

10. As I have found that MI breached his duty of care, he is not entitled to the loss he claimed.

The Counterclaim

**Did MI breach his duty of care by failing to give way to EG?**

11. For the reasons provided above, I am persuaded that MI breached his duty of care to check that the cycle way was clear before he crossed it.

**What reasonably foreseeable loss can EG prove he has incurred that his insurer is entitled to be compensated for?**

12. EG claimed from his insurer to have his motorbike repaired. The repairs were performed for a total cost of \$6,444.92. Q Ltd provided a pre-accident valuation that showed EG's motorbike had an estimated value of \$11,000 before the collision. I am therefore satisfied that it was economic to repair the motorbike for \$6,444.92 and an order is made for that amount.
13. When the counterclaim was filed it included a claim for a replacement helmet, however, EG advised that he did not want to pursue that portion of the claim and therefore no award is made for his helmet to be replaced.

**Referee: K Cowie DTR**  
**Date: 23 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>.