



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

**District Court**

**[2023] NZDT 130**

**APPLICANT MJ**

**RESPONDENT CB**

**RESPONDENT J Ltd  
INSURER**

**The Tribunal orders:**

MJ is to pay \$7,000.00 to J Ltd by 23 March 2023.

**Reasons**

1. On 23 July 2022 MJ and CB were involved in a collision at [Street A]. MJ was riding an e-bike and CB was driving a [car].
2. MJ has applied for a declaration of non-liability against CB, as his insurer is holding her liable for the cost of repairing his vehicle.
3. J Ltd claims \$8,182.84 for the cost of repairing CB's vehicle, comprised of uninsured losses of \$300.00 and insured losses of \$7,882.84.
4. The Tribunal's jurisdiction to make a declaration of non-liability only applies to contractual claims, not claims in tort. However, because CB and J Ltd have filed a counterclaim, the Tribunal can make a binding determination.
5. All parties attended the hearing. MJ was represented by her father with the Tribunal's consent.

*Who caused the collision?*

6. The relevant law is the law of negligence. Road users must take care not to drive or ride in a way that causes damage to other vehicles or property. The Land Transport (Road User) Rule 2004 ("LTR") explains the rules that apply to road users. The relevant rules applied to MJ as a cyclist.
7. Rules 2.5 and 2.5A of the LTR provide that a road user turning right must either: move as far to the right of their lane as possible before turning, or alternatively move to the left and only turn when the road is clear of traffic and it is safe to turn.
8. The road in question is part of SH2. Shortly before the point of impact, the speed reduces from 70km/h to 50km/h. The road dips down as it crosses a small bridge, and then rises up towards a roundabout and the town centre.

9. The road is two-lane (one each way). There is a solid white line on the inside of each lane, and there is ample roadway on the left of the solid line for cyclists (for convenience referred to as the “cycle lane”, although it is not specifically designated as such).
10. MJ says she crossed the bridge and was riding up the incline, intending to turn right into the Mitre 10 entrance before the roundabout. She says he was travelling at about 20km/h. She looked behind to check the way was clear and made a hand signal. She had both hands on her handlebars as she began her right turn. She says she was struck suddenly by a vehicle. In a statement to J Ltd, she said the vehicle “came out of nowhere at speed”.
11. CB says as he drove along [Street A], he saw a cycle on the righthand side of the ‘cycle lane’. She appeared to be struggling up the hill and was weaving from side to side. His wife warned him to look out for her because of the way she was riding. He therefore kept to the righthand side of his lane. When he was one or two car lengths from the cyclists, she turned to the right in front of his car. He did not have time to stop and swerved to the right to avoid hitting her head on. The right side of her e-bike hit the left side of his vehicle, and the momentum of the car caused the bike to scrape down its left side. His wife gave evidence confirming his recollection of events.
12. All the panels on the left side of CB’s car were damaged and the wing mirror was knocked off. The only damage to MJ’s e-bike was to the carrier.
13. MJ’s father made submissions on behalf of his daughter about speed and stopping distance, and speculated on possible contributing factors. His evidence was not particularly helpful, as he did not witness the incident and cannot say whether the assumptions he has made about the relative position of the car and bike are correct.
14. In MJ’s statement to J Ltd she said she stopped and checked the road was clear before crossing to the right. This differs from her evidence at the hearing. She says her memory of the incident was “fragmented” at the time and that it took a while for the events to “sink in”.
15. I have no doubt that MJ has given an honest description of the events to the best of her recollection. However, she has acknowledged some inconsistencies with her memory. Both MJ’s father and mother have given clear and consistent evidence that she pulled across in front of their vehicle, and that CB had insufficient time to avoid a collision. I therefore prefer their evidence. I would add that, if CB had not swerved and instead hit MJ head on, she would have likely suffered more serious consequences.

*Are the costs claimed reasonable?*

16. If a party breaches a duty owed to another, and causes damage, they must pay the cost of putting that person into the position they would have been in had the breach not occurred. There is a duty to mitigate loss.
17. The difficulty in this case is with the amount claimed, which is very high given the relatively modest amount of damage apparent from the photographs. I acknowledge that there are contributing factors:
  - a. The large number of panels damaged
  - b. Recent increases in the cost of vehicle repairs and painting
  - c. The extra cost for the metallic red paint
18. J Ltd says that in cases of this kind the other party is usually given an opportunity to obtain an alternative quote. However, this did not happen as MJ disputed liability and commenced proceedings.
19. Insurance claims are generally supported by a single invoice that has gone through an assessment process. Where uninsured parties bring a claim, it is more usual for there to be two or three

comparative quotes provided, and it is not necessarily the case that comparative quotes are much the same.

20. In the particular circumstances of this case, because of the very high amount claimed compared to the damage, and notwithstanding the factors contributing to the cost, I am not satisfied that J Ltd has proved the amount claimed is the most cost-effective repair cost. I have therefore deducted approximately 15% from the amount claimed to take account of this. This does not affect CB, as I have made the full amount payable to J Ltd on the basis that it will refund the excess of \$300.00 directly to him.

**Referee: J P Smith**

**Date: 9 March 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>.