



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 352

APPLICANT MQ

RESPONDENT NP

The Tribunal orders:

The claim is dismissed.

Reasons

1. While driving his vehicle over a property owned by MQ, NP's vehicle ran over a dog owned by MQ and NQ sadly causing serious injuries. The property is used as a base for MQ's construction company and the area in front where the accident occurred is open to the public and has a u-shaped driveway over which NP was driving.
2. MQ and NQ claim the costs of vet treatment for their dog which to date amount to some \$20,000 plus their solicitor's costs of \$1200. Their claim is based on the allegation that NP was in breach of a duty of care to drive reasonably while using the driveway and not to damage any of his property while doing so. The allegation is that NP had no good reason to be driving over the property and that he was merely using it to turn his vehicle.
3. NP on the other hand submits that there is no evidence that he was not driving carefully and responsibly and that the dog must have run in front of him. That the dog was not killed but was injured indicates he was not speeding or otherwise negligent in the operation of his vehicle. The cause of the injuries to the dog was it's being allowed to run free and not under control on the property.
4. The issues to be decided then are whether NP was negligent in the operation of his vehicle and, if so, whether that caused the injuries to the dog, and, if so, what amount should be paid.

Findings

Liability

5. I find NP was not negligent in the operation of his vehicle.
6. The onus is on the person making an allegation of fact or cause in a civil court proceeding to prove on the balance of probabilities that it is more likely than not that the facts or cause are as they say.

7. In this case, the allegation is that NP had no right to be driving over the property and the fact that he struck the dog is evidence enough of his culpability.
8. However, there is no legal basis for a claim that because a dog was struck by a car that the driver must have been negligent in its operation. What must be proven is that the driver was driving the car in breach of his duty of care to drive on the roads in a prudent and responsible manner. That applies whether the driver is on a public or private road. In this case the road, or driveway, was on private property.
9. MQ's position implies that NP should not have been there at all, but I accept NP's position that they had both done business together and that he was there to visit MQ. It really makes no difference whether NP intended visiting or not because until such time he was asked to leave or was trespassed, there was no obligation on him not to go on to the property. Yes, if he was merely using the driveway as a turning circle that would be regarded as at least a bit cheeky and could be a reason why he might be asked not to come on to the property again.
10. However, that circumstance does not mean or point towards his driving unreasonably. That would require a witness or, say, CCTV footage.
11. Accordingly, without evidence that NP was speeding or otherwise driving recklessly, I cannot find he was in breach of his duty of care. The claim then must be dismissed.

Referee: G R Meyer
Date: 7th 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>.