



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1364

APPLICANT **N Limited**

RESPONDENT **TC**

APPLICANT'S **R Insurance Limited**
INSURER
(if applicable)

The Tribunal hereby orders:

TC is to pay the sum of \$9550.10 directly to R Insurance Limited on or before 16 October 2019.

Reasons

1. Mr X, driving a N Ltd vehicle, and Ms C were the drivers involved in a vehicle collision on B Drive. Ms C was turning right out of the Pak'N'Save carpark and Mr X was driving in the right-hand lane of two along B Drive.
2. Another vehicle turned right across Mr X's path into the supermarket carpark shortly before Ms C began to make her right-hand turn. As she crossed B Drive the front of Mr X's vehicle impacted the driver's door of her car.
3. N Ltd and R Insurance Ltd claim \$15,000.00 for losses resulting from the collision.
4. The issues to determine are:
 - Did Ms C breach her duty of care to Mr X by failing to give way when turning right?
 - Was there any contributory negligence on the part of Mr X?
 - What are the reasonable losses resulting from the collision and what amount is Ms C liable to pay?

Did Ms C breach her duty of care to Mr X by failing to give way when turning right?

5. Ms C was turning right and therefore had a duty to give way to all traffic on the street onto which she was turning. By pulling into the road when there was a vehicle coming, she has breached that duty and is therefore liable in negligence for the resulting collision.

6. The issues raised by her representative at the hearing, Mr J, about Mr X's line of travel after turning into B Drive off H Rd and Mr X's speed, will be addressed below in terms of whether or not there was any contributory negligence on the part of Mr X. While speed may be a factor in the amount of damage resulting from any particular collision, it is not causal because speed of an oncoming vehicle is something that a driver wanting to turn right must factor into their decision about whether the way is clear to begin their turn. Ms C failed to make that assessment accurately in this case and has therefore failed to give way.

Was there any contributory negligence on the part of Mr X?

7. I find that Mr X's path of travel in turning from H Rd into B Drive, as shown from his vehicle's dashcam video, was usual and appropriate. I note that the road markings on that corner mean either lane on B Drive is available to enter without there being a lane change because the white lines between lanes do not begin immediately after the corner. Mr X's entry directly into the right-hand lane does not constitute a lane change. There was no negligent driving on his part in this regard.
8. I also do not accept the argument that X's location on the road, which Ms C and her witnesses say was on or just over the centre-line, had any bearing on the cause or extent of the collision. It is at least possible that the witnesses' memory of this is from at or just after impact when it is quite possible that Mr X moved slightly to the right to attempt to avoid impact. Even if he had been travelling, unusually, with his right wheels on or over the centre-line of the road, this collision did not involve a vehicle coming from the opposite direction, so that position would have no relevance in terms of cause of the collision, which was Ms C's failure to give way.
9. With respect to speed, I note that Mr X estimates his speed prior to any braking just before impact at around 53kph. I infer that he most likely braked prior to the impact because I would expect the damage to Ms X's driver's door to have been much more extensive if he had impacted it at 53kph.
10. Ms X was approached immediately after the collision by an independent witness, Mr U Q. Mr Q appeared as a witness by phone at the hearing and stated that he saw the four-wheel drive (N Ltd's vehicle) speeding in the middle of the road. He was of the view that Mr X's speed was "well over 50". Mr Q also stated Mr X had swapped lanes left to right as Ms C's car exited the carpark, whereas Mr X's dashcam shows that he had been in the right-hand lane as soon as he rounded the corner into B Drive. This inaccuracy does not mean that Mr Q's impression of speed was also inaccurate, and while a precise speed cannot be determined from his evidence, I accept based on his evidence, and particularly based on his actions in approaching Ms C after the event even though she had been making a right-hand turn and should have given way, that Mr X's speed was at least some degree higher than the 53kph Mr X himself estimated.
11. On the other hand, the dashcam footage does not reveal that Mr X's speed was grossly excessive, and as stated above, I infer that he must have had time to brake before the impact. For all these reasons I find that his speed was a minor contribution to the collision, the major contribution being Ms C's failure to give way. I therefore set the liability at 80% Ms C and 20% Mr X.

What are the reasonable losses resulting from the collision and what amount is Ms C liable to pay?

12. R Insurance Ltd had claimed the actual costs of writing N Ltd's vehicle off including pre-accident value, sign-writing, and storage costs minus salvage, a total loss of \$17,034.50 reduced to \$15,000.00. However, the repair estimate R Insurance Ltd obtained was for \$11,880.13 (which included all sign-writing repairs, rather than excluded them as originally stated in the claim).

13. Whatever contractual obligation R Insurance Ltd had with its client N Ltd, does not change Ms C's liability in negligence which is to pay only for reasonable losses suffered, which in practice means the lower of the repair cost or the pre-accident value (including other net losses).
14. The lowest of the available losses is therefore the repair estimate of \$11,880.13 plus the assessment fee of \$57.50, a total of \$11,937.63. The \$448.50 towing cost claimed by R Insurance Ltd was for storage only which would not have been incurred if the vehicle had been repaired so Ms C is not liable to pay that amount.
15. Based on the proportional liability finding at point 11, Ms C is liable to pay 80% of \$11,937.63, being \$9550.10.

Referee:

Date: 25 September 2019



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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.