



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 60

APPLICANT **NI**
APPLICANT **QI**
RESPONDENT **SB**
APPLICANT'S **N Ltd**
INSURER
(if applicable)

The Tribunal orders:

SB is to pay N Ltd \$10,299.15 by Friday 29 March 2024.

Reasons

1. SB collided into the rear of QI's car which was stationary at traffic lights. At the time, QI's car was being driven by his son NI. QI's car was insured with N Ltd. SB was driving his father's car at the relevant time and there was no insurance in relation to SB's father's car.
2. N Ltd wrote off QI's car. N Ltd paid QI \$12,900.00 for his car (being \$13,400.00 (the pre-accident value of QI's car) less QI's excess of \$500.00). N Ltd is therefore seeking to recover moneys from SB. At law an insurer has what is called "rights of subrogation". This means an insurer has the right to pursue a third party that the insurer believes caused the loss to its client (the insured) car. As insurer does this to recover amounts it has paid its client.
3. In this case the amount claimed by N Ltd against SB is \$10,299.15.
4. The issues to be decided by the Tribunal are:
 - a. Is SB liable in negligence for the damage to QI's car?
 - b. Is the amount claimed by N Ltd substantiated?

Is SB liable in negligence for the damage to QI's car?

5. NI says he was stationary at traffic lights when SB collided into the rear of QI's car (which NI was driving) causing damage.
6. It appears from the evidence (email correspondence) that SB does not dispute that he collided into the rear of the car but disputes the amount of damage caused and the costs claimed by N Ltd. He says it is "insurance fraud".

7. SB says in email correspondence that he collided to the rear of the car at 5km per hour and that the car he was driving had no damage. In an email dated 14 July he said he would get CCTV footage. However, to date SB has not provided any evidence to substantiate his comments. The only evidence I have is from N Ltd. I can only make my decision on the evidence I have before me.
8. I conclude that SB is liable for the damage to QI's car. The damage might not appear significant to the ordinary person. However, repair costs can be significant. This is discussed further below.

Is the amount claimed by N Ltd substantiated?

9. During the hearing today I spoke with Mr L from [loss adjustor company]. [Loss adjustor company] are loss adjustors (assessors) and are independent from N Ltd. They did the estimate of the cost to repair the car.

The damage costs

10. After speaking with Mr L, I am satisfied that the repair costs for the damage are all associated with the collision to the rear of QI's car.
11. For most rear end collisions many things are simply not visible, such internal damage.
12. Mr L also explained the components that required to be done to fix the damage. For example:
 - a. The rear panel is a double skin panel and therefore the panel would have needed to be removed, cut and welded. Therefore, it was best to replace it (as a more economical option).
 - b. The tailgate is also a double skin so needed to be replaced.
 - c. Painting needs to be blended, otherwise there would be a mismatch of colour. To do this the ¼ glass need to be removed and put back because one cannot just mask the rubber edge in order to repaint.
 - d. Plastic components need to be replaced as they cannot be repaired.
 - e. The rear panel would have to be new because if it is a used part it cannot be spot welded just plug welded. The [car] specifications therefore require replacements to be new.
13. The parts were obtained from [Car parts company] who obtain the best quotes for parts.
14. I am satisfied that the estimated repair cost (including markups charged in the estimate) are substantiated.

The amount claimed by N Ltd

15. The amount claimed by N Ltd is not the amount it would have cost to repair the car, but the pre-accident value of the car less what N Ltd got for the wreck. An insurer cannot seek to recover the cost of repair if it is more than the pre-accident value less the sale proceeds for the car (plus other costs such as tow charges). The liable party is only liable to pay the lower of the two amounts.
16. The pre-accident valuation was \$13,400.00 which was the mid-price range for the car as shown on the [online] Valuation. From that N Ltd deducted the amount of the sale proceeds for the car which was \$3,050.00 (as shown on the [used car company] invoice) and deducted the refund from NZTA being a refund for the cancellation of the car's registration. The total amount came to \$10,299.15 which is less than the estimated cost of repair of \$10,525.56.
17. For the reasons above the amount SB must pay N Ltd is \$10,299.15.

Other matters

18. SB had emailed N Ltd on 11 February saying (amongst other things) that he would not be attending the hearing as the name N Ltd used for him was not correct.

19. Between 5 January and 9 January, there was various email exchanges between SB and the Disputes Tribunal. In those emails, SB refers to N Ltd as being the Tribunal's client. N Ltd is not a client of the Tribunal. The Tribunal is independent and is a division of the District Court. The Tribunal hears disputes between parties. Hearings are in front of Tribunal Referees who run the hearings. If the parties are unable to reach an agreement between themselves before or during the hearing, the Referee will make a decision on the information it has before it.
20. In the emails to the Tribunal, SB say he has left for [overseas city] where he is working in the mines. N Ltd says they were not told this – he had not mentioned this in his February emails to N Ltd. He did say in one of the February email to:

Tel [NI] to com see me or tell them to get f..... good bye

It is unclear therefore from his comment above, whether indeed he is in [overseas city].
21. The Tribunal on 9 January also asked SB to provide his cell phone number in [overseas city]. He said he didn't have one as yet as he had to start work straight away. The Tribunal responded saying (amongst other things) asking for a number urgently "as soon as you obtain one". It appears a number was not provided.
22. I phoned SB on the number in the claim form (even though he told N Ltd on 11 February that he would not be attending the hearing) but it was not answered. Hearings can continue and be determined in the absence of a party.
23. In relation to SB's name, he says in correspondence to the Tribunal that his name was SB. He also in his email to N Ltd on 11 February that his name was SB. I note in an earlier email to N Ltd (on 19 July 2023) he said his name was "SB". SB's wife (H) in an email to N Ltd dated 14 August 2023 introduces herself as "[SB's] wife" and elsewhere in that email refers to him as "my husband [SB]".
24. At the hearing today, N Ltd said it wishes to retain the name for SB as "SB". It is not for me investigate the name for SB.
25. I note that the correct applicant should only be QI as he is the insured.

Referee: Ms Jaduram
Date: 14 February 2024



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>.