



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

District Court

[2020] NZDT 1382

**APPLICANT** NI

**RESPONDENT** CT

**SECOND  
RESPONDENT** FM Limited

**RESPONDENT  
INSURER** GNH Insurance

**The Tribunal hereby orders:**

1. FM Limited is added as a respondent party to the claim.
2. The claim is dismissed.

**Reasons:**

1. NI was driving home from work on 29 July 2019 at about 7.00pm on a main rural road. He slowed when he saw a truck with hazard lights on assuming there was an accident. As he came up to the truck the person alongside the truck waved him on. He accelerated and was travelling at 50-60kph when a number of cows appeared in front of him. He was unable to avoid a collision. His car was written off. All insured losses have been paid to him and a further payment of \$1556.00 was paid under the moral obligations clause of the respondent's insurance policy. NI claims \$8143.80 for further uninsured losses.
2. FM Limited disputes it is liable for the uninsured losses.
3. The issues I must decide are:
  - a. Has FM Limited acted with a standard of care expected of a reasonable farmer?
  - b. If not, is the loss by NI a foreseeable loss?

### **Has FM Limited acted with a standard of care expected of a reasonable farmer?**

4. The relevant law is section 5 of the Animals Law Reform Act 1989 and the law of negligence. When determining negligence, the Tribunal must consider the standard of care expected of a reasonable farmer in the company's position, the common practice in the locality in relation to fencing and the taking of other measures to prevent animals straying onto highways in the locality.
5. NI states that but for the company's animals being on the road in the dark he would not have had an accident that wrote off his vehicle and put him in the difficult financial situation he is in whereby his market value of his vehicle was significantly less than the finance on the vehicle.
6. NI provided a number of supporting documents including a written submission, a police report, photos of his vehicle and the roadway where the collision occurred, the local council stock control strategy, emails, a part of a newspaper report and a copy of an invoice.
7. NI, a director of FM Limited, told the Tribunal that a herd of approximately 120 dry cows were in a paddock some 800 metres from the highway. He told the Tribunal that they were in a fully fenced paddock which was secured by a standard 14' steel farm gate. He states the gate was closed and latched with spring latch. He states this is usual practice for farming in all areas.
8. NI further states he had checked the herd for calving very late afternoon (with no problems) and they were due to be checked again shortly. Because the cows were being checked regularly NI told the Tribunal the double gates to the road were open to allow access for farm vehicles. He told the Tribunal he had just been called by the driver of the truck while eating dinner to say there were cows on the road. He states he discovered the steel gate had been damaged and the latch had been pulled out of the post allowing the cows to escape. He states the animals were not hungry and had no need to be damaging a gate/gate latch to that extent and he could not figure out why cows would have damaged the gate allowing the herd to escape. NI told the Tribunal there had been stray dog(s) in the area and this was a possible cause of frightening the cows.
9. With the gates to the main road open, it was always likely that if for any reason the cows escaped from the paddock some could make their way to the road. Stray dogs are possible cause of frightening cows to such an extent that they may push through a gate (or a fence). Because it was known by at least one of the directors of FM Limited there had been a stray dog(s) in the near locality it is prudent for a farmer exercising a reasonable standard of care to ensure there was at least one further gate closed between the paddock the cows were in and the road.
10. For this reason, I find FM Limited has not acted with a standard of care expected of a reasonable farmer.

### **Is the loss by NI a foreseeable loss?**

11. If NI suffers a loss caused by a breach by FM Limited, he is entitled to damages to put him back to the position he was in before the collision including any damages that an ordinary person would believe would flow from such an occurrence.
12. NI states he has suffered a loss because his vehicle carried finance over and above the market value of the vehicle.
13. I do not believe the ordinary person in the street would expect to pay for finance that was above the value of a vehicle. Furthermore, NI has not proved that he has actually suffered a loss in terms of the finance. Before the collision he owned a vehicle (that had a market value that was \$8143.80 less than it was insured for) and a debt of \$8143.80. After the collision he has been put in the position of having the value of his vehicle (by way of money and is in a position to purchase a similar value vehicle) and a debt of \$8143.80. For these reasons I find that he has not suffered a loss of \$8143.80 and further the loss is not a foreseeable loss.
14. For these reasons I must dismiss the claim.

15. I note that insurance, whether NI's or FM Limited's insurance has covered his other insured and uninsured losses. If these had not been covered, FM Limited would have been liable for those losses.

**Referee:** C Murphy  
**Date:** 14 May 2020



## 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 28 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 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, 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>.