



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

**District Court**

**[2023] NZDT 172**

**APPLICANT** PV

**RESPONDENT** OS

**SECOND  
RESPONDENT** B Ltd

**APPLICANT'S  
INSURER  
(if applicable)** J Ltd

**The Tribunal orders:**

OS and B Ltd is to pay J Ltd \$3,922.28 by Wednesday 7 June 2023.

**Reasons**

*Background*

1. PV was in the left hand lane at a roundabout and OS was on the right lane at that roundabout. PV says he was stationary at the time because he was waiting for OS to go because OS was driving in a van which carried glass panes on the outside. He could not see if there was anything coming to his right until the van moved first. When the van started into the roundabout to travel right around the roundabout, the back corner of the van scrapped the front right corner of PV's [car], causing damage.
2. The van is owned by B Ltd. OS was employed by B Ltd and at the time was doing the morning run for work.
3. PV says OS was speaking to his boss (WS) on the phone (not on hands free) at the time of the collision. WS says when they were talking on the phone it was on hands free.
4. After the collision WS arrived promptly as he lives around the corner. He offered PV their panel beater to get the car fixed. PV refused and filed a claim with J Ltd.
5. The initial claim amount was for \$4,670.03. I noted that the repairers' invoice was for \$3,962.53. At the hearing J Ltd said they neglected to include the rental information. They therefore deducted the rental charge from its claim. The claim amount is therefore \$3,962.53.
6. OS and B Ltd are disputing liability. WS is the director and shareholder of B Ltd.

*The issues*

7. The issues to be determined by me are:

- a. Is OS responsible for the damage to PV's car? If so, can B Ltd also be held responsible?
- b. Are the costs claimed by the insurer reasonable?

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8. All drivers owe a duty of care to other road users to drive in a manner which does not cause injury to people or property. Any failure to do so breaches that duty and the driver liable for the cost of repairing property where there is damage to property, such as motor vehicles.
9. OS says that as he pulled out to go around the roundabout the back corner of the van's grill hit PV's front bumper. He says he could not see what was going on and said that most people when they see a van such as the one he was driving give them more room. He says he was already there at the roundabout waiting. PV says they were both there at the same time and that he (PV) was waiting to turn into the street to his left.
10. Whether they were both there at the same time or not is irrelevant. It is clearly OS who owed a duty of care given the type of vehicle he was driving. That van is wider as it had exterior carriers fitted to the sides of the van to carry glass. He had a duty to see if anyone was approaching (if indeed PV was approaching). The duty does not rest on PV as he was in his lane. On that basis I find that OS breached his duty of care. He was negligent.
11. In any event:
  - a. OS was speaking to WS on the phone at the time (whether or not he was on handheld or handsfree). Drivers must ensure there are no distractions which cause them to lose concentration when driving.
  - b. It is unusual that WS offered their panel beater to repair the damage had he thought OS was not responsible. PV and his passenger (in their written statement) said that after PV refused, WS asked what his excess was. He said he thought it was \$1,500.00 and WS then offered to pay that.
12. At law, an employer is vicariously liable for the actions of its employees. As mentioned above, OS was an employee of B Ltd and was driving the van in the course of his employment. B Ltd is therefore also responsible for OS's negligent act.

Are the costs claimed by the insurer reasonable?

13. OS and B Ltd is obliged to pay reasonable costs to compensate PV and his insurer, J Ltd, for the damage to PV's car.
14. The photographs provided in evidence show scuffing to the bottom right of PV's car and a scuffing to the right front tyre and the alloy.
15. J Ltd provided a detailed breakdown of the repairs and costs. The costs were reviewed by J Ltd's assessor. That cost was \$3,962.53 (as mentioned above).
16. WS says the marks on the car and tyre could have been buffed off.
17. During the hearing, I spoke to the assessor (UT). He provided a detailed explanation of the damage and what was required to repair the damage. For example, why things needed to be removed and refitted. He mentioned a scuff to the alloy part of the wheel. They have to remove the wheel, sand

it off and respray. They had to take off things like the light sensors. He said because it's a [luxury car] one "can't just tape it up".

18. OS says he didn't understand the transport and the COVID-19 charge in the repairers' costs under the heading "Misc".
19. The assessor said the COVID-19 charge was because this occurred at a time of COVID so the repairers had to clean the inside of the car. I am not convinced because on 8 June 2020 Ministry of Health reported that there are no more active cases of COVID-19 in New Zealand and that evening New Zealand moved to Alert Level 1. The repairs appear to have been done in June/July 2020 and it was not until 11 August 2020 that 4 new cases were recorded in [City]. Therefore, I am removing the \$35.00 COVID-19 charge.
20. The transport charge related to transporting the car to and from the dealership ([redacted]) for a calibration and wheel alignment. The car was transported by a towing company at a cost of \$253.00 (including GST). The assessor says this is the transport industry standard as one wouldn't have a "young person" driving a [luxury car]. Although there may have been a suitably older person to deliver the car to the dealership and back, there would be a charge for time and mileage in doing so (which would be 2 round trips (4 in total each way). Accordingly, I am awarding that charge.
21. I am satisfied from the evidence provided by J Ltd that the costs for the repairs (after deducting the COVID-19 referred to above) are reasonable and therefore can be recovered. There was no evidence that there was pre-existing damage.
22. The GST exclusive amount of \$3,445.68 less the \$35.00 COVID-19 charge, brings the costs to a total of \$3,410.68 (excl GST). The GST inclusive amount is therefore \$3,922.28.

### **Conclusion**

23. For the reasons above, OS and B Ltd must pay J Ltd, \$3,922.28.

**Referee: Ms Gayatri Jaduram**

**Date: 3 May 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>.