



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 696

APPLICANT QH & TH

RESPONDENT SR

**APPLICANT'S W Insurance Ltd
INSURER**

The Tribunal orders:

SR is to pay directly to W Insurance the sum of \$7,261 on or before Wednesday, 31 January 2024.

The applicant's insurer is to refund to the applicant \$600, the insurance excess from the first monies received, or earlier at its discretion.

Summary of Reasons:

[1] The hearing was convened by teleconference. All parties appeared at the hearing.

Is the respondent liable for the collision of 24 March 2023?

[2] The applicant claims that on the above date his son was travelling along [Avenue A] in the right-hand lane travelling towards [Suburb A] when the respondent's vehicle turn right across his lane after entering [Avenue A] from [Avenue B], intending to travel in the opposite direction towards [Suburb B]. The applicant claims the respondent is liable for the collision because he entered [Avenue A] from a give way controlled sideroad but failed to give way.

[3] The respondent admits the collision and the position of the vehicles immediately before the collision but claims the other driver is liable for the collision because he failed to drive to the conditions. The respondent claims the traffic was very heavy and the vehicles in the left-hand lane on [Avenue A] had left a gap to allow him to complete his right-hand turn. The respondent claims the other driver who was approaching from the right-hand lane would have had time to avoid the collision had he been driving more considerately.

[4] In terms of the Traffic Regulations every driver approaching or entering an intersection which is controlled by a give-way sign at or near the intersection shall give way to any vehicle approaching or crossing the intersection from a roadway not controlled by either a stop sign or a give-way sign. On that basis the respondent is more likely to be liable for the damage caused to the applicant's vehicle. However, I have considered the respondent's claim that it was the other driver's manner of driving that at the least contributed to the collision.

[5] As submitted by the insurer, vehicles blocking an intersection, where one lane of vehicles has stopped to leave a gap for a turning driver is a common cause of collision. If a driver wishes to make a right hand turn in such a situation, they must be cognisant of the risk in doing so.

[6] I have considered the respondent's claim that other driver bears some liability. I am not persuaded by this. It is not enough to simply rely on a gap left by another vehicle to assume the way is clear. The only practical way of proceeding for a reasonable and prudent driver is to go forward very slowly, poking the nose of the car out until it is possible to see whether anyone is coming along. It is not enough to simply assume that the right lane will be clear. I find no evidence of contributory negligence on the part of the applicant's driver.

What are the reasonable costs of remedy?

[7] The applicant claims the cost of repair \$7,261 and has supplied evidence to the respondent and the Tribunal supporting this claim. The respondent has not provided the Tribunal with any evidence showing this amount is not the actual or reasonable cost of repair to the applicant's vehicle following this collision.

[8] I find that the damage is consistent with the description of the collision and the cost claimed for repair is reasonable given the repairs carried out and the nature of the damage.

Referee: Hannan DTR

Date: 21 December 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 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>.