



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 29

APPLICANT QN

APPLICANT KI

APPLICANT FJ

RESPONDENT KN

The Tribunal orders:

1. The name of the respondent is amended to KN.
2. KN is to pay to QN the sum of \$3,223.99 on or before 21 March 2024.

Reasons:

1. FJ was the registered owner of a [vehicle] in September 2023. The car had been paid for by KI. FJ and KI had asked QN to collect the car from a mechanic for them while they were overseas. QN was looking after the car while they were away.
2. On the morning of 2 September 2023, the [vehicle] was parked outside QN's property on the front lawn. She noticed that there was damage to the front passenger side door of the car.
3. QN believed the car had been struck by a ute belonging to KN, who had parked his ute at the property opposite her house.
4. QN spoke to KN and the parties viewed the damage to the [vehicle]. KN accepted that it appeared that he had struck the [vehicle] while reversing his ute out of his property.
5. QN undertook to arrange the repairs to the car and got an estimate from a local panel beater which she forwarded to KN.
6. There was further communication between the parties, but no money was paid by KN to QN.
7. QN is seeking \$4,995.99. She is seeking \$3,223.00 for the cost of repairing the damage to the car. She is also seeking a further \$1,772.00 for "*incurred late fees, incurred interest fees, damages to personal financial earnings, credit score rating and a personal loan.*"
8. There was no attendance at the hearing by FJ or KI. They advised the Tribunal in advance that they would be unable to attend, and that QN could represent their interests at the hearing.
9. The issues the Tribunal has to consider are:

- a. Is QN entitled to \$3,223.99 for the costs of repairing the car?
- b. Is QN entitled to additional compensation of \$1,772.00 for personal damages as claimed?

Is QN entitled to \$3,223.99 for the costs of repairing the car?

10. KN did not dispute that he drove negligently and is liable for the cost of repairs to the car. The dispute was over the amount payable to QN.
11. The purpose of damages in negligence is to put the person who suffered the damage back in the position they would have been in had the negligent act not occurred. Losses claimed must arise from the negligent act, they cannot be too remote and there is a duty on a claimant to mitigate their losses.
12. KN initially disputed the amount set out on the invoice from [panel beaters]. He queried the amounts charged for the remove and refit of a left rear taillight and the left sill cover.
13. At the hearing, QN provided the explanation for that as given to her by the panel beaters. She said that those items were removed to prevent damage being caused to them when the repaired areas were being repaired and painted. They were then refitted to the car. They were not replaced.
14. KN agreed that the explanation given made sense and he had possibly misunderstood the details on the invoice. He did not otherwise dispute the cost of the repairs.
15. I find that repair costs as set out on the [panel beaters] invoice are reasonable and were caused by KN's negligent driving.
16. While QN was not the owner of the car, the arrangement she had with the owners was that she would be responsible for damage caused while the car was in her possession. QN paid the invoice for the repairs on 29 November 2023.
17. The Tribunal notes that the parties met in November 2023 and signed a document entitled "*Debt Agreement*." In that document, which KN accepts he signed, he agreed to pay QN \$3,223.99 as stated in the estimate.
18. I am satisfied that QN is entitled to \$3,223.99 for the costs incurred by her in having the car repaired.

Is QN entitled to additional compensation of \$1,772.00 for personal damages as claimed?

19. QN claimed a further amount of \$1,772.00 for further "*personal damages*."
20. QN claimed interest and a late fee. She said on the invoice from the panel beaters it stated that interest would be charged at a rate of 5% per month on overdue accounts.
21. QN and the panel beaters had a contract. KN was not a party to that contract. Therefore, any terms that may or may not have been agreed between QN and the panel beaters are not binding on KN. QN paid the invoice on time and did not have to pay any interest to the panel beaters.
22. The agreement between QN and KN did not refer to any interest or late fees becoming payable in the event of non-payment.
23. The Tribunal can award interest under s20 of the Disputes Tribunal Act 1988 ("DTA") if it sees fit. I am not satisfied that any interest should be awarded in this claim. That is because it was not agreed between the parties and for the following reasons.

24. QN referred to the cost to her of having to take out a personal loan to pay the panel beaters' bill. She referred to bank interest rates of over 13%. However, she confirmed at the hearing that she did not take out a bank loan and she instead borrowed money from her family. She does not have to pay any interest on that amount.
25. QN has not suffered a loss by having to borrow money from her family and no compensation is payable in that regard. For this reason too, I do not intend to award interest.
26. QN said had she not paid the panel beaters invoice on time she may have got a bad credit rating, and this could have affected her future ability to obtain credit. There is no loss to QN in this regard. It is speculation on what may have occurred had she not paid the bill. QN has not received a bad credit rating due to KN's negligence.
27. QN claimed for "*damages to personal financial earnings.*" She says she operates as a sole trader and any financial expenses she incurs are hers personally. There was no evidence placed before me of QN suffering any financial loss apart from the cost of paying for the repairs. I am not satisfied that any further compensation is payable in that regard.
28. QN is not entitled to any of the further compensation sought.
29. There was no evidence before me that FJ or KI suffered any loss in relation to this incident. The damage to the car was repaired at no cost to them, as that cost was paid for by QN.
30. KN is to pay to QN the sum of \$3,223.99 on or before 21 March 2024.

Referee: P Byrne
Date: 28 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>.