



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 207

APPLICANT S Ltd

RESPONDENT LB

APPLICANT'S J Ltd
INSURER
(if applicable)

The Tribunal orders:

1. The claim is dismissed.
2. The order is to be emailed to J Ltd.

Reasons:

3. The matter has previously been part heard and adjourned for LB to inform his insurer of the claim. Today LB did not answer the Referee's call and he has not attended the hearing which proceeded in his absence. The claim will be determined on the evidence before the Tribunal today.
4. IV drove around another vehicle being driven by LB as he was reversing into a car park on the side of the road, when the left hand side of her vehicle and bull bars on LB's vehicle collided. The damage to IV's vehicle cost \$6,179.62 to repair. J Ltd is seeking to recover this sum.
5. The issues to be addressed are:
 - (a) Who caused the collision?
 - (b) Are the claimed costs reasonable?

Law

6. Every driver has a duty to act with reasonable care and with due consideration for others. This obligation arises under both the common law and from the statutory requirements set out in s8 of the Land Transport Act 1988 and the Land Transport (Road User) Rules 2004.
7. If the facts show that a driver has failed to take care that would have been taken by a reasonable and prudent driver in the circumstances, and there is no reasonable explanation raised by the respondent for that failure, then the respondent will be liable for any foreseeable damage which results.

8. As both parties owe a duty to the other, it is also possible for both parties to be in breach of that duty. If that is the case, then each party will be contributorily liable, with costs being shared in proportion to the percentage of responsibility that each has for the collision.
9. In this case both parties considered the other to be in breach of their duty.
10. Any applicant to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been discharged by a party I need to consider and evaluate the evidence presented to the Tribunal by the parties.
11. I would like to reassure the parties that all evidence presented to the Tribunal has been considered, but this order only refers to essential evidence material to the issues and is not intended to be a full record of the hearings or evidence presented.

Who is responsible for the collision?

12. I have carefully considered the evidence from the parties and I am satisfied on the balance of probabilities that IV has breached her duty of care and caused the collision.
13. IV was following behind LB when they both made a left-hand turn. LB has stopped and indicated that he was going to reverse into a car park. IV has stopped behind his vehicle, and as he began his manoeuvre and she has checked there were no oncoming traffic, she has driven off, moving into the other lane so she could pass the reversing vehicle.
14. IV said that the collision occurred when the front of LB's vehicle has swung out at such a wide angle that the front of his vehicle has crossed the middle line, and then scrapped down the side of her vehicle.
15. However, I am not persuaded by IV evidence that a reversing vehicle would cross the middle line of a road of normal width whilst undertaking this type of manoeuvre. I acknowledge that LB's vehicle was a ute with bull bars on the front which on some vehicles, extend out the front; however there is insufficient evidence that this was the cause of the collision in this case.
16. I find it more likely than not that IV has attempted to pass LB's vehicle without having fully moved into the other lane and the collision has occurred. Furthermore, IV has seen that he was reversing, she has not changed his path, and she has not contemplated the risks associated with not waiting and made the decision to proceed to drive around him and in doing so, caused the collision. There is insufficient evidence that LB contributed to the collision.
17. Accordingly, IV has not reached the evidential standard required by the Tribunal and the claim is dismissed.

Referee: DTR Goddard
Date: 5 April 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>.