



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 253

APPLICANT SG

RESPONDENT QN

RESPONDENT J Ltd
INSURER

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 18 May 2022, QN crashed into the rear of SG's car, which was parked. SG, who was not insured for the damage, now claims \$6,000.00 from QN for the damage to his car, which was written off.
2. The issues to be determined are:
 - a) Was the crash caused by a medical event? Was QN careless in any way?
 - b) What sum, if any, is QN liable to pay?

Was the crash caused by a medical event? Was QN careless in any way?

3. The tort of negligence applies when someone breaches a duty of care to another person causing foreseeable damage. Drivers have a duty of care towards people who own vehicles or other property in the vicinity, to avoid causing damage to their property.
4. Generally, if a driver hits a parked car there is an inference that the driver failed to take care. However, if a medical event caused the driver to lose control of the vehicle, the driver may not have been at fault. The driver may still be liable if, based on the driver's knowledge of the medical condition, he or she should not have been driving.
5. QN's husband, who was approved as her representative, gave evidence that she was heading to an appointment with the hairdresser at the time of the crash, and she was unable to recall afterwards what had happened. On the basis of medical evidence provided, I accept that QN was found straight after the crash to have suffered from a brain bleed, which was the probable cause of the crash. Since the crash was caused by a medical event, this displaces the usual inference that a driver who hits a parked car must have failed to take care at the time of the crash.

6. The courts have found that a driver affected by a medical event may yet be responsible if the decision to drive was negligent due to awareness of the danger of such a medical event occurring. If QN knew that she had a sufficiently high chance of a brain bleed or similar event to make it too risky for her to drive, she would be responsible for the consequences of deciding to drive anyway. SG submitted that there is an established correlation between Alzheimer's and the risk of a stroke. QN had mild dementia of the Alzheimer's type. However, risk of medical events is a matter of degree. We generally trust medical professionals to weigh up when the risk factors reach a level that makes someone unsafe to drive. QN's general practitioner had not warned her against driving, and subsequently provided a letter stating her view that QN was fit to be driving on the day the crash occurred.
7. Although QN had complained of a headache in the days prior to the crash, her husband said that it had resolved with ordinary painkillers, and that she did not have a headache on the day of the crash.
8. SG bears the onus of proving that QN was responsible for the crash. I find that there is no evidence QN was aware that her medical condition made it unsafe for her to drive. Although SG is an innocent person who has suffered a misfortune, so is QN. Neither party was at fault in what happened. Therefore, I find that QN cannot be held responsible for the crash and is not liable to pay for the damage.

Referee: E Paton-Simpson
Date: 16 December 2022



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>.