



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 332

APPLICANT **TG**

APPLICANT **TS**

RESPONDENT **NS**

**SECOND
RESPONDENT** **NS Ltd**

**THIRD
RESPONDENT** **BH**

**APPLICANT'S
INSURER
(if applicable)** **Applicant's insurance company**

The Tribunal orders:

1. BH and NS Limited are both added as Respondents in the claim.
2. BH and NS Limited are jointly and severally liable to pay the Applicant's insurer \$1,773.04 on or before 9 September 2023.
3. The claim against NS is dismissed.

Reasons:

1. In July 2021 TS was driving on [road] in [suburb] when he says his car was hit from behind by a car driven by BH. TS and his insurer say that there was damage to TS's car as a result of the collision which it cost \$1,773.04 to repair. TS and his insurer seek an order that BH and his employer, NS Limited, are liable to pay these costs.
2. The issues to be resolved are:
 - a. Did BH cause a collision because he did not stop his car safely behind TS's car?
 - b. If so, are the costs of repair proved?
3. The claim hearing was initially filed against NS personally. At the hearing NS advised that the driver of the other car was BH, and the owner of the car is NS Limited. NS said that BH is an employee of NS Ltd and was driving in the course of his employment at the time of the collision.

4. I am satisfied that NS was not the driver of the car that TS says hit him, and there is no basis on which NS can be liable in this claim. The claim against NS is therefore dismissed.
5. BH is added as a Respondent in the claim, because he was driving the car that TS says hit him. BH attended the hearing and agreed to waive his right to further notice of the claim.
6. NS Ltd is also added as a Respondent in the claim, because it may be vicariously liable in the claim because BH was driving in the course of his employment at the time of the alleged collision. At the hearing NS on behalf of NS Ltd waived the company's right to further notice of the claim.
7. NS Ltd has insurance from [Insurance Company]. NS said that he had contacted [Insurance Company] and told them BH's version of the events on the day in question. NS said [Insurance Company] said he could not make a claim because no collision had taken place.
8. NS said at the hearing that he had contacted [Insurance Company] again when he received the notice of this claim, and they said they would not take part in the hearing. The hearing went ahead today without [Insurance Company] because I am satisfied they have been made aware of the claim and have decided not to be represented.

Did BH cause a collision because he did not stop his car safely behind TS's car?

9. On the evidence available I find that it is more likely than not that there was a collision in which the car driven by BH hit the back of TS's car, and that this collision was caused by BH failing to stop his car safely behind TS's car.
10. The law that applies is the law of negligence. Drivers must take reasonable care in operating their vehicle and are responsible for any reasonably foreseeable damage suffered as a result of a failure to do so.
11. The duty to take reasonable care includes a duty to follow the Land Transport (Road User) Rule 2004 ("the Rules"). Rule 5.9(3) provides that a driver must not drive on a road following behind another vehicle so that the driver cannot stop short of the vehicle ahead if that vehicle ahead stops suddenly.
12. TS says he was driving his car on the [road] in [suburb] in morning rush hour traffic in July 2021. He says the traffic was busy and slow and the weather was wet. He says that the car behind him hit the back of his car. He says he felt and heard an impact from behind. He says he pulled over to the side of the road and the car behind him, which was driven by BH, pulled over as well.
13. TS says they both inspected TS's car but could not find any damage on the bumper of the car. He says BH said he had sneezed while driving. TS says they exchanged details, and TS said he would be in contact if he found damage later.
14. TS said he went home and later inspected the car properly with his wife, and found damage on the boot of the car – which is higher up than where he and BH had been looking for damage.
15. TS says his car had not been in any collisions before the one he says happened with BH, and nothing happened to his car afterwards. He says he is sure that the damage on his boot can only have happened in the collision he says happened with BH.
16. BH says that he was driving very slowly behind TS's car. He says that he saw that traffic up ahead was moving, so he took his foot off his brake. He says at that moment he sneezed. He says when he finished sneezing he looked up and saw that TS's car had not moved, and so BH hit his brakes hard. BH says he thought he avoided a collision. At the hearing BH said he could not be certain, but was 90% sure that he did not hit TS's car.
17. BH says he then saw the car in front pull over to the side of the road, and so he pulled over as well. He says he and TS looked for any damage on TS's car and could not find any but exchanged

details anyway. Alan said that because there was no damage to TS's car he thought he had not hit the car at all.

18. BH and NS said at the hearing that the car BH was driving was a [car] with vertical bull bars fitted. They say that the damage on the boot of TS's car is horizontal dents which could not have been caused by BH's car.
19. I have had regard to all of the evidence available, I find that it is most likely that BH's car did hit TS's car, and that the cause of the collision was that BH failed to stop safely behind TS's car when TS's car was stopped in heavy traffic.
20. The main reason for my finding is that TS says he felt and heard an impact from behind, and that at the time this happened BH has said he had his foot off his brake and had his eyes closed while he sneezed and then realised that TS's car had not moved and had to brake suddenly. I consider that BH's perception of an impact may have been affected by sneezing and then braking. I consider that TS's account is more reliable because he was not distracted at the time of the collision.
21. My finding is assisted by the fact that there is damage on the back bonnet of TS's car. I have taken into account NS Ltd's suggestion that the damage is of a horizontal nature and the bull bars on NS Ltd's car are vertical. However, the damage, does seem to be two dents on either side of the [brand] badge on the boot of TS's car. I consider it is quite possible that this damage is consistent with an impact from bull bars.
22. For these reasons I consider that it is most likely that there was an impact between the two cars, and that this was most likely caused by BH failing to stop his car safely when TS's car was stopped, because BH was distracted by sneezing.
23. It was accepted at the hearing that BH was driving in the course of his employment with NS Ltd at the time of the collision, this means that NS Ltd is jointly and severally liable with BH for the cost of repairs to TS's car.

Are the costs claimed proved?

24. I am satisfied that the costs claimed are the actual costs and are reasonable. The costs are proved with appropriate documents and invoices. The repairs relate to the boot area of TS's car which is the area damaged in the collision. The costs claimed have been assessed by an assessor.
25. For these reasons I find that BH and NS Limited are jointly and severally liable to pay the Applicant's insurer \$1,773.04.

Referee: L Trevelyan

Date: 9 August 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>.