



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 368**

**APPLICANT**      **TG**

**RESPONDENT**    **AM**

**SECOND  
RESPONDENT**      **PD Ltd**

**THIRD OR  
SUBSEQUENT  
RESPONDENT**      **TN**

**APPLICANT'S  
INSURER  
(if applicable)**      **BJ Ltd**

**The Tribunal orders:**

1. The claim by PD Ltd is dismissed.
2. PD Ltd and AM are to pay BJ Ltd a total of \$28,573.21 on or before Monday 14 August 2023, comprising:
  - a. \$2,975.95 for TG's claim; and
  - b. \$25,597.26 for TN's claim.

**Reasons:**

1. On 30 July 2023, there was a three car collision, on the [motorway] near [road]. TG was driving the front car [car 1] in the left hand lane and had stopped short of another collision in front of him. TN was driving [car 2] and AM, an employee of PD Ltd was driving [car 3]. The second and third cars collided with the third car shunting the second car into the first car.
2. TG and its insurer BJ Ltd claimed \$2,975.95 for insured losses for his car which was written off, from TN, PD Ltd and AM. However at the hearing, the claim against TN was withdrawn.
3. TN and its insurer BJ Ltd counter claimed \$25,597.26 comprising \$25,084.48 for repairs and \$512.78 for 14 days rental from PD Ltd, AM and TG. However at the hearing, the claim against TG was withdrawn.
4. PD Ltd claims \$19,000.00 from TG, TN and BJ Ltd for repairs to its car.

5. So, the issues to be determined are:

- a. Who was responsible for the collision?
- b. If AM was responsible, is PD Ltd vicariously liable?
- c. What if any reasonable costs associated with the damage to the vehicles ought to be paid and in what proportion?

### **Who was responsible for the collision?**

6. The relevant law is the tort of negligence, which applies when someone breaches a duty of care to another person causing foreseeable damage. Drivers have a duty of care to other drivers, which includes compliance with the Land Transport Act 1988 and the Land Transport (Road User) Rule 2004 (LT Rule).
7. LT Rule 5.9(3) requires drivers following behind another vehicle to be able to stop short of the vehicle ahead if the vehicle stops suddenly. LT 2.3(2)(b) provides that a driver when driving on a road marked in lanes must not move from a lane until he or she has first ascertained that the manoeuvre may be made safely.
8. Under section 3(1) of the Contributory Negligence Act 1947 (CNA), where any person suffers damage as a result partly of his own fault and partly the fault of another, the claim shall not be defeated by reasons of his own fault, but the damages recoverable shall be reduced to such an extent as the court thinks just and equitable having regard to the claims share in the responsibility for the damage.
9. AM's position initially was that both TN and TG were responsible for the collision. However at the hearing, he acknowledged that TG was not responsible. I accept this, predominantly because the legal responsibility is on the drivers following to be able to stop short of the vehicle ahead, even if it stops suddenly.
10. AM acknowledged that he collided into the second car. But his position is that this was caused by TN in the second car suddenly changing lanes from the left lane to second lane in front of him, which he says reduced his safe travelling distance, so that when TG stopped, AM was unable to stop. In support of this position he pointed to the point of impact being to the right rear of the second car, and to the left front of the third car, and also pointed to TN failing to mention his lane change in his claim to BJ Ltd.
11. However, on balance I find that it was AM who was responsible for both collisions by failing to allow enough time to stop when the vehicles ahead stopped suddenly, and for the avoidance of doubt, I do not accept that it has been established that either TG or TN negligently caused or contributed towards the collision. I say this for reasons which include:
  - a. The legal responsibility is on the drivers following to be able to stop short if the vehicle ahead stops suddenly, so the starting point is that AM, and TN as following drivers are liable;
  - b. But I preferred TN's evidence that he had completed his lane change, and also that he had stopped short of the first vehicle, before he was then shunted from behind by AM causing him to collide into the first vehicle, for reasons which include:
    - i. I accept TG's evidence that he felt only one impact, rather than the two which would have been likely had this not been the case,
    - ii. I accept that the damage to the rear of the first car and front of the second was less severe than the damage to the rear of the second car and front of the third car, pointing to reduced force arising from being shunted from the third car;
    - iii. While I accept that the damage extended to the respective front and rear quarter panels, I preferred BJ Ltd's evidence that the positioning of the damage to all the vehicles was more centralised pointing to the lane change manoeuvre having been completed, as this was supported by the photographic evidence, and by the damage as recorded in the Traffic Collision Report (TCR), which showed more extensive damage to the central locations rather

than to the front and rear sides. This included damage to the rear of the first car to the centre which aligned with the central damage to the front of the second car, with the damage to the rear of the second car under the number plate and principally at the back, which aligned with the damage to the front of the third car which was also largely central on the middle of the bonnet around the number plate location; and

- iv. This finding is also consistent the Traffic Crash report conclusion immediately after the collision.

### Is PD Ltd vicariously liable?

12. While the company disputed that AM was liable, it acknowledged and I accept that it was vicariously liable for any negligence by him as he was an employee driving in the connection with his employment.

13. Consequently, as I have found AM was negligent, I find that PD Ltd is vicariously liable.

### What if any reasonable costs associated with the damage to the vehicles ought to be paid and if there was contributory negligence, how should the costs be apportioned?

14. A person who negligently damages another person's car must pay the cost of putting the other person back into the position that they would have been in had the damage not occurred.

15. Given my finding that there was no contributory negligence by TG or TN, it is not necessary to apportion any costs.

16. There was no dispute about the extent and cost of the repairs to the vehicles. So, I accept the evidence from BJ Ltd, supported by the motor vehicle repair assessment reports and supporting invoices that the following costs claimed are fair and reasonable and arise from the collision:

#### [Car 1]

- a. I accept the assessment that it was uneconomic to repair given the pre-accident valuation of \$4000.00 and assessed repair costs of \$3087.75. I also accept that reasonably foreseeable costs were incurred of \$89.70 for a third party pre-accident valuation and \$86.25 for towing. So, I find that PD Ltd and AM are liable for the following loss, calculated as follows:

Pre-Accident Valuation	\$4000.00
Less sale of wreck	<u>\$1200.00</u>
	\$2800.00
Plus Valuation fee	89.70
Towing	<u>\$86.25</u>
<b>Total Loss</b>	<b>\$2975.95</b>

#### [Car 2]

- a. I accept that the costs of repair totalled \$25,084.48. Also, while I accept that rental costs were incurred totalling \$3,003.46 as supported by the [rental car company] invoice for the period 2 August – 22 October 2021, I also accept that the rental period was greater owing to delays in obtaining parts due to Covid, and so a more limited period of 14 days rental at \$512.78 is more reasonable in the circumstances. So, I find that PD Ltd and AM are liable for the following loss, calculated as follows:

Repairs	\$25,084.48
Rental	<u>\$ 512.78</u>
<b>Total Loss</b>	<b>\$25,597.26</b>

17. So, in summary, I find that PD Ltd and AM are to pay BJ Ltd the combined total sum of \$28,573.21 for loss suffered to BJ Ltd.

**Referee: G.M. Taylor**  
**Date: 24 July 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>.