



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 63

APPLICANT TS and BS

RESPONDENT KI

APPLICANT'S J Ltd
INSURER
(if applicable)

The Tribunal orders:

KI is to pay the sum of \$6037.01 to J Ltd, as insurers for TS and BS, by no later than 17 March 2023.

The counterclaim is dismissed.

Reasons:

1. BS was driving on [Street A] in the right lane. Prior to [Street B], which was to BS's left, BS changed into the left lane in preparation for making a left turn into [Street C]. As BS passed [Street B], KI pulled out of [Street B] into the path of her oncoming vehicle causing damage.
2. TS and BS claim in the Disputes Tribunal for recovery of their losses in the accident.
3. KI has counterclaimed for his losses. KI claims he believed BS was about to turn into [Street B] as she was indicating a left turn while in a T2 lane.
4. It is for the Tribunal to determine if either KI or BS were negligent, if either party is liable to compensate the other for their losses, and if those losses have been proven.

Who is liable for the losses incurred in the accident?

5. A person may be liable to compensate another for their losses if that person has negligently caused loss or damage to the other.
6. When exiting [Street B], KI had a duty in accordance with Rule 4.1, Land Transport (Road User) 2004, to stop at the intersection of [Street B] and [Street A], and to give way to all oncoming

vehicles. KI should therefore have taken extra care to ensure he had ascertained the intention of the oncoming vehicles. The CCTV footage shows KI had limited visibility of BS's vehicle as she came around the corner. The video is not sufficiently clear to determine if BS was indicating, however her line of passage is not consistent with a vehicle about to turn into [Street B]. Although KI claims BS was indicating as she approached [Street B], BS was not slowing or moving her vehicle to the left as if she was about to turn. As the prudent driver must not rely on mere indication alone, I find KI negligent as he failed to ensure the way was clear before exiting [Street B]. KI is therefore liable for all losses incurred in the accident.

7. Whether or not BS should have been in a T2 lane at that point is not a factor in the accident. It was foreseeable that vehicles could be in the T2 lane. KI was required to give way to all traffic already on the road, including vehicles using that lane.

Have the losses been proven?

8. The losses have been proven. Without evidence to the contrary, I accept the assessment of loss and the repair account totalling \$5292.33 as submitted by J Ltd. KI is liable to pay that amount. KI is also liable to pay consequential losses incurred as a direct result of the accident. I find the sum claimed of \$744.68 for consequential losses has been proven and find KI liable to pay that amount.
9. In view of the above, I find KI liable to pay a total of \$6037.01 as ordered above.
10. The counterclaim is dismissed as I have found KI wholly liable for the losses incurred.

Referee: K. Edwards

Date: 16 February 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>.