



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 73

APPLICANT UD

RESPONDENT CE

APPLICANT'S INSURER B Ltd

The Tribunal orders:

1. The claim is dismissed.

Reasons:

1. At the hearing, UD was represented by his son CD. CD was the driver of the vehicle involved in a collision with CE. CD alleges he pulled up behind CE and was in traffic stopped on the [Street] in [City] when CE suddenly reversed into him. UD, and his insurer, claim damages of \$10964.91.
2. CE denies the claim because he says he had no option but to reverse because he was threatened by the driver in front of him. CE acknowledges he has a duty of care to not reverse into others.
3. The issues I must decide are:
 - a. Were the circumstances of the collision such that CE meets requirements of an exception to the driving rules for reversing?
 - b. If not, is the amount claimed reasonable?

Were the circumstances of the collision such that CE meets requirements of an exception to the driving rules for reversing?

4. The law of negligence requires us to have a duty of care to not cause damage to others' property and if we do, we are liable to put the person's damaged property back to the state it was in before the damage was caused. The Land Transport (Road User) Rules 2004 and the Road Code clarify the duty of care for drivers. Generally when reversing we must take extra special care before and during the reversing manoeuvre to ensure the way is clear.
5. Land Transport (Road User) Rule 1.8 states a person is not in breach of the Rule if that person proves that an act took place in response to a situation on the road AND the situation is not the person's making AND the act was taken to avoid death or injury of a person.
6. CD states, he was coming up [Street] and saw a white van stopped just before a pedestrian crossing and he pulled up behind it to wait before proceeding forward. He states he heard yelling and angry words from what seemed to be a person in front of the van. He states he then saw a tall, large and aggressive guy yelling at the driver of the van. He states he then saw the reverse

lights of the car in front of the van come on and that car was reversing towards the van from about a car length in front of the van. He states the van then reversed and hit the front of my dad's car. CD states after the car reversed, he suddenly took off. He states he suspected the driver of the car saw a Police car that was behind him. CD states that given the demeanour, the abuse and the actions of the driver in front of the van he would have been fearful of his safety if he had been the driver of the van. He states he got out of his car and spoke to the Police but they could not assist because they had a client in their vehicle that needed urgent transporting to a mental health facility. He states he also spoke to CE and CE was very distressed about the whole situation.

7. CE states he was driving along [Street] slowing from the 70 kph to the 50 kph restriction and he saw a large older vehicle, such as the car, coming up behind him at a very fast speed. He states the vehicle then passed him on the inside of the lane (he was fully in his lane) and pulled in front of him and stopped immediately in front of him forcing him to also stop. He states the driver got out of the car and was yelling at him, abusing him, threatening him, and telling him he was a member of a gang. He states that driver then got back into the car, and he saw its reverse lights come on and then start to reverse towards him. He states he had a real fear for his life and/or injury because he was in a light van and if he was hit his legs would be crushed or worse. He states he immediately tried to reverse and out of the way of anybody, but he could not avoid hitting the car behind him. He states suddenly the car stopped reversing and took off. He too states he suspected the driver of the car had seen the Police vehicle in his rear vision mirror.
8. Both CD and CE each presented their version of events on the day of the collision at the very commencement of the hearing, and before I covered any law including exceptions. Both described an exceptionally large and aggressive male individual who was threatening CE, including threats relating to his local gang affiliation. Prior to the incident this individual had demonstrated aggressive and threatening driving by passing at speed on the inside of CE, who according to the evidence of both parties seems to have been obeying the road rules. These threats occurred immediately prior to this individual speeding and passing on the inside of CE, pulling in front of CE and stopping and forcing CE to stop. The combination of this individual's intimidating driving and threats to CE personally would I believe make an ordinary person fear for themselves and their physical safety. Further, I find that CE's reaction to this individual then commencing reversing towards his light van would create a real concern for his safety and particularly that he could suffer significant damage to his legs, or worse, if the driver of the car had reversed into the front of the van. For these reasons, I find that the exception created in Rule 1.8 on this occasion should be applied and I find that CE is not liable for the damage he caused.

Referee: C Murphy
Date: 4 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>.