

BETWEEN

**DT
APPLICANT**

AND

**DTD INSURANCE LIMITED
APPLICANT'S INSURER**

AND

**VG
RESPONDENT**

Date of Order:

23 March 2016

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the respondent VG is to pay the sum of \$4,606.35 (being all insured loss) directly to DTD Insurance Limited on or before 13 April 2016.

Facts

[1] DT and VG were both driving on the A motorway city-bound in rush-hour traffic in the early morning. They had originally been driving in the same lane, with VG ahead of DT, before VG changed lanes to the left.

[2] VG says that as he changed lanes, the traffic ahead of him slowed, he hit a car to his left and came back to the right, colliding with DT's vehicle.

[3] DT says that VG left the lane ahead of her completely and as she drove forward and past his position to her left, he changed lanes back into the side of her car – she checked to her right but could not move to avoid him as there was traffic in the lane to her right.

[4] The parties agree that the cars impacted side-on, with the damage to DT's vehicle being along almost the full length of its left side, and the damage to VG's vehicle being on the right-hand side, including to the right-hand mirror.

Issues

[5] The issues to determine are:.

- a. Did VG complete a lane change to the left before moving back into his original lane?
- b. If so, is VG liable in negligence for the damage to DT's car?
- c. Did DT's actions contribute to the impact occurring?
- d. What are DT's reasonable losses?

Did VG complete a lane change to the left before moving back into his original lane?

[6] I find that VG did move fully into the lane to the left of his original lane (the one in which DT was also travelling) because of the location and extent of damage to each vehicle. The damage is to the side of each car, with the damage to DT's vehicle extending almost the entire left side of her car. This shows that the cars impacted entirely side-on, and given the

narrow width of the lanes at this point of the motorway, it is not possible for a side impact to have occurred if both vehicles had still been partially occupying the same lane.

[7] VG was not entirely clear at the hearing whether he had fully left the lane or not and he has provided a statement from his brother with whom he was travelling, but as I note that his brother had been asleep and only woke on impact, his statement does not assist with the course of events leading to the impact.

[8] I find DT's recall of events to be clear and credible and I note that she would have had a clear view ahead of her of VG's movements. If VG had moved only partially out of the lane ahead of her, it is unlikely that she would have pulled forward let alone have been able to get herself into a position that resulted in a side-on impact with him.

[9] Therefore VG must have moved entirely out of his original lane before DT pulled alongside him, otherwise she would have been partially in the lane further to the right and I consider it likely given the hour, that there was other traffic in that lane as DT says there was.

If so, is VG liable in negligence for the damage to DT's car?

[10] Yes, as VG was effecting a new lane change, this time to the right, he was in breach of the road user rule 2.3(2)(b) that says a driver must not move from a lane before he or she has first ascertained that the manoeuvre may be made safely. VG did not check that the lane to his right was clear, instead moving back to the right quickly, it seems in response to the traffic ahead of him slowing suddenly.

Did DT's actions contribute to the impact occurring?

[11] No, there is no evidence to support VG's suggestion that DT either moved forward prematurely or attempted to overtake him, and the likely presence of traffic in the lane to her right and the side location of damage to both cars is inconsistent with his scenario.

What are DT's reasonable losses?

[12] . I accept the repair costs claimed of \$4,203.85 as actual, reasonable and consistent with the nature of the impact, as there was damage across multiple panels of the left side of the car and a wide area therefore needed to be both repaired and painted.

[13] The rental car costs claimed are reasonable consequential losses resulting from the impact, both the number of days (10 days for assessment and repair) and the amount charged per day of \$35.00 plus GST per day.

[14] The claimed amount of \$4,606.35 is therefore awarded. If VG wishes to enter into a weekly payment arrangement with DTD Insurance Ltd he should make contact them before the date for full payment given in the order (13 April 2016).