

BETWEEN

DV
APPLICANT

AND

VE
RESPONDENT

Date of Order:

22 August 2016

Referee:

Referee Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that VE is liable to pay the sum of \$3,554.00 directly to DV on or before 12 September 2016.

Facts

[1] DV was riding her motor scooter in the bus lane (as allowed) on A St when a vehicle turned right across her path, moving through a gap left by stationary traffic in the other two lanes heading in the same direction as DV. She was fortunately uninjured but claims losses suffered as a result of damage to her scooter, which was uneconomic to repair.

[2] DV exchanged details with the driver of the car that collided with her, and that driver gave her a lift to work after the incident.

[3] VE denies she was the driver of the car involved in this collision, saying she knew nothing about this collision when she received notice of the Disputes Tribunal proceedings.

Issues

[4] The issues to determine are:.

- a. Was VE the driver of the vehicle that impacted DV's scooter?
- b. Is VE liable for DV's losses resulting from the collision?
- c. What were DV's reasonable losses?

Was VE the driver of the vehicle that impacted DV's scooter?

[5] I find that VE's identity as the driver of the vehicle that impacted DV's scooter is proven on the balance of probabilities for the following reasons:

- a. DV confirmed, on seeing VE in the hearing room that she is 90-95% certain that VE is the same person driving the car the day of the collision and the same person who gave her a lift to work afterwards. She said that if that person was not VE, then "it could have been a sister or someone who looked very like her". (VE acknowledged there is no-one that has access to her car who looks like her and she does not have a sister even though she had suggested one of her flatmates may have taken her car that day).

- b. DV presented at the hearing a notebook containing driver details written by the driver of the car immediately after the collision. Those details include VE's name, her current address, her current email address, an outdated cellphone number (a number that VE used until February 2016) and her car license plate number. It is unlikely that DV would have these details unless VE, or someone who knows her well and was also driving her car that day, provided them.
- c. VE wrote down her name, address and phone number at the hearing for a handwriting comparison to the notebook and the handwriting in both samples is very similar, just slightly neater than the details written after the collision.
- d. Despite the date of the collision being provided in the Disputes Tribunal papers served to VE, she has provided no evidence of alternative whereabouts at the time of the collision and no evidence that anyone else was driving her car that day. She confirmed that she works in the central city, where the collision occurred, although she says she starts work at 8am (and the collision occurred 10-15 minutes past 8 in the morning).

[6] All the above reasons combined mean that it has been well-established that the driver of the car was VE.

Is VE liable for DV's losses resulting from the collision?

[7] I find that VE has failed to check adequately that all lanes were clear before undertaking a right-hand turn. She has therefore failed to give way to DV, who was entitled to be riding in the bus lane and had right-of-way. VE is liable for DV's reasonable losses.

What were DV's reasonable losses?

[8] DV has provided both an assessment of the cost of repairing her scooter and the price that she paid for it new in February 2016. The cost of repairs exceeds \$5,000.00 whereas the new purchase price paid in February was \$3,554. She has also provided evidence that the new purchase price currently is now higher than she paid in February (including on-road costs) but she has claimed \$3,554.00 as the pre-accident value. As the scooter was only a few months old at the time of the incident, I accept \$3,554.00 as the reasonable pre-accident valuation, noting it is less than the current replacement cost.

[9] For all the above reasons, VE is liable to pay \$3,554.00 to DV as per this order.