

BETWEEN

EY
APPLICANT

AND

UB
RESPONDENT

Date of Order:

13 April 2017

Referee:

Referee: Perfect

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that UB is to pay the sum of \$2000.00 directly to EY on or before 4 May 2017.

Facts

[1] EY contracted UB through a cartage website to bring a dirt bike she had purchased for \$4500.00 for her son from XX to XA. The bike was delivered by the seller to UB premises in XX, and early the next morning he loaded it onto the back of his truck with some other deliveries and set off for XA via AA.

[2] He stopped for a coffee break in BB and, while he was inside the mall, the bike was stolen off the back of his truck.

[3] EY claims \$4500.00 from UB being the value/purchase price of the bike, because she says that he was negligent in leaving the bike unsecured on the back of his truck unattended and because he told her on the phone before the bike was delivered to him that he had insurance.

Issues

What arrangements did the parties make regarding insurance prior to the transport?

[4] I find that there is no evidence to establish that the parties made an agreement regarding insurance. EY says that she asked UB about insurance because the bike was going to be delivered to him the evening before he departed XX (because he sets off at 4am) and the seller seemed concerned about where he was dropping his bike off. She says UB's replied that he had insurance.

[5] UB says he did not say that he had insurance at any point and does not recall being asked about it or having any conversation about insurance. He says he does have insurance for his workshop (where he also lives at the back) but does not carry cartage insurance as it is very expensive.

What type of carriage was this arrangement in terms of the provisions of the Carriage of Goods Act?

[6] I find that in the absence of any other agreement, the carriage of EY's goods was done at "limited carrier's risk". The CoGA makes provision for other types of carriage such as "at declared value risk" and "on declared terms" where the carrier can agree to be liable for any goods on any terms but the CoGA requires that any such agreements be made in writing. Similarly, if UB had intended EY to bear the risk of transit, a written agreement to that effect would have to have been in place.

[7] In this case, even if it was established that insurance had been discussed, no agreement was made in writing so section 8(4) applies which means that the carriage defaults to a carriage at "limited carrier's risk".

[8] I note that section 6 of the CoGA makes clear that no other area of law applies, that the CoGA effectively supercedes any other cause of action, whether in tort (negligence) or statute-based causes of action (such as consumer legislation).

Conclusion

What amount is UB liable for?

[9] Section 15(1)(d) limits liability for goods carried at "limited carrier's risk" to \$2000.00. As EY has proven via evidence of the purchase price of the bike as \$4500.00 I find that UB is liable for the maximum available remedy of \$2000.00.