



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1416

APPLICANT **KG**

RESPONDENT **TM**

APPLICANT'S **LMN Ltd**
INSURER
(if applicable)

The Tribunal orders:

TM is to pay \$4380.37 to LMN Ltd on or before 2 September 2020; and the counter-claim is dismissed.

Reasons

1. KG and TM were the drivers involved in a minor motor vehicle collision as KG was turning left into the driveway of her workplace (TC, near the airport) at 3.30am.
2. TM had been travelling behind KG and says that KG crossed the centre line, moving right to the other side of the road and stopping for approximately a minute before commencing a left-hand turn into the driveway. KG says that she has to swing wide to enter the driveway to her workplace but as the single lane in her direction is wide and there were no vehicles parked on the left-hand side, this did not involve her crossing the centre-line and she did not stop at all before commencing the left-hand turn.
3. The damage to KG's car was to the left front corner and the damage to TM's car was to the right side front panel and driver's door.
4. KG and LMN Ltd claim repair costs of \$4380.37 and TM counter-claims her repair costs of \$2995.75.
5. The issues to determine are:
 - Did KG cross the centre-line before turning left into the driveway?
 - Did TM pass KG's moving vehicle on the left?
 - Which driver has primary liability and is there any contributory negligence on the part of the other driver?
 - What were the reasonable losses suffered in the collision?

Did KG cross the centre-line before turning left into the driveway?

6. I find on the balance of probabilities that KG did not cross the centre-line before commencing her left-hand turn. The single lane in her direction is at least two cars wide and it would not be necessary for her to cross the centre-line in order to make a wide left-hand turn which she says she did. I accept her statement that she moved to the right side of the lane in order to make a wide turn.
7. I consider TM's recollection of events, that KG moved fully onto the wrong side of the road and stopped for up to a minute before commencing her left-hand turn, unlikely given that KG was intending to enter the driveway of her workplace where she has worked for over two years. She was not unfamiliar with the area or the particular driveway and there was no reason for her to cross to the other side of the road, nor to stop for any length of time. TM pointed out that the collision occurred while both cars were on the road, that she did not go up onto the kerb or into the driveway at any point, and I accept that, but note that the single lane is wide enough to accommodate both vehicles abreast.
8. TM says that debris from the collision was visible on the centre-line showing where the cars collided but has no evidence to support that contention. A witness, BC, who is also an employee at TC, arrived on the scene after the impact had already occurred and told the hearing that she saw KG's left-hand indicator still blinking (which TM disputes) and that she saw glass from the collision in approximately the centre of the single lane in which the two drivers had been travelling, and 'maybe a little towards the footpath'.
9. TM says that she did not see the witness at the scene and BC clarified that she did not leave her car, but was parked waiting to enter the TC driveway as there was a car across the driveway so she could not enter. Even without BC's evidence, TM has provided no evidence to support her version of events and given the width of the road and KG's familiarity with the turn, I consider it unlikely she crossed the centre-line.

Did TM pass KG's moving vehicle on the left?

10. As a result of the above finding, I conclude that TM must have been passing KG's moving vehicle on the left when the collision occurred. While KG may have slowed considerably before making a wide turn, I do not accept that she stopped for any length of time. As the driver travelling behind her, if TM was in any doubt as to KG's intended direction of travel, even if TM saw no indicator and saw her moving towards the right, TM had a duty to slow to first ascertain the front vehicle's intended direction before passing on the left on the single lane in that direction.

Which driver has primary liability and is there any contributory negligence on the part of the other driver?

11. By passing a moving vehicle on the left in a single lane, TM is in breach of section 2.8 of the Land Transport (Road User) Rule 2004, as KG was neither stationary nor indicating to turn right (there is nowhere to turn right into in the immediate vicinity). TM therefore breached her duty of care to KG and has primary liability in negligence for the collision.
12. As there is a dispute as to whether or not KG was indicating left and no independent witness to support TM's statement that KG was not indicating, and I have already made the finding that KG did not cross the centre-line, I find that there is no contributory negligence on KG's party. TM is therefore 100% liable for the collision.

What were the reasonable losses suffered in the collision?

13. TM's counter-claim losses are not considered because KG has no liability for the collision.

14. LMN Ltd has provided a detailed repair invoice, parts invoices and photographs and I accept that the claimed amount represents the actual and reasonable losses sustained as a result of this collision. TM is therefore to pay \$4380.37 to KG's insurer.

Referee:

Date: 12 August 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.