IN THE DISPUTES TRIBUNAL **[2015] NZDT 715**

BETWEEN	**CQ** APPLICANT
AND	**CQC INSURANCE LIMITED** APPLICANT'S INSURER
AND	**XK** RESPONDENT
Date of Order:	10 February 2015
Referee:	Referee Ashcroft

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that XK is to pay to CQC Insurance Limited the sum of $3,020.35 by 5pm Friday 27 February 2015.

Reasons

[1] On 22 August 2014 CQ was travelling South on Z Road, Y. XK was travelling in the opposite direction waiting in a turning bay on Z Road to turn right into X Road. As XK turned across Z Road the two vehicles collided and both were extensively damaged.

[2] CQ's vehicle, a 1993 Nissan Skyline GTS which had travelled 206,000kms, was insured with CQC Insurance Limited. The estimate to repair CQ's vehicle was $3,554.65. As the vehicle had a pre-accident valuation of $3,000, it was determined by CQC Insurance to be uneconomic to repair and a total loss. In the Tribunal, CQC Insurance and CQ claim $3,020.35 from XK being:

The pre-accident valuation of the vehicle	$3,000.00
Plus the pre-accident valuation fee	$ 69.00
Less the net proceeds of the sale of the wreck	- $ 48.65
	$3,020.35

[3] XK was driving her cousin AA's ex-partner BB's vehicle; a 1996 Toyota Legnum which had travelled 217,243kms. The estimated cost of repairing that vehicle is $5,994.95. In the Tribunal XK counterclaims that sum from CQ.

[4] This matter was heard on 15 January 2015. It was adjourned for XK to speak with the owner(s) of the vehicle she was driving and if she chose to do so to add him/her or them as applicant(s) to her counterclaim. In the event that XK elected not to join anyone else to her counterclaim I directed that the matter was to be referred back to me after 30 January for a determination. XK has made no contact with the Tribunal.

[5] The issues are

a. Did XK turn into CQ's lane thereby causing the collision?

b. And, if so, are the costs claimed reasonable?

Did XK turn into CQ's lane thereby causing the collision?

[6] The relevant law is the law of negligence. Negligence concerns the duties that a person owes to another to take care. Drivers must take care not to drive in a manner that causes damage to another vehicle. The standard of care required is that of a reasonable prudent driver. A driver is negligent if they breach a duty they owe to another driver and cause damage as a result. The Land Transport (Road User) Rule 2004 explains the rules that all drivers in New Zealand must abide by.

[7] Rule 4.2 provides for giving way in the absence of signs. Subsection(2) states that a driver turning or about to turn, must give way to any vehicle not changing lanes, or not making a turn.

[8] The duty of care is owed by the driver of the motor vehicle.

[9] I have had regard to XK's evidence that she had been waiting to turn into X Road for some time, had let three vehicles go past and did not see CQ approaching until after she had turned right across Z Road. As she did not see CQ approach, XK believed that he may have done a u-turn or sped out of the shops nearby and into her path causing the collision. XK believes that CQ may have been drinking alcohol.

[10] I have had regard to CQ's evidence that he was travelling straight along Z Road and that XK failed to give way to him. He denies drinking, speeding, having stopped at the shops or having done a u-turn.

[11] No independent witnesses came forward at the time of the collision.

[12] At the hearing, CC, a friend of XK and her husband gave evidence. CC works directly across from the intersection where the collision occurred. CC said that from his workplace on V Street he had a clear view of the intersection, looked out on hearing loud revving from the Skyline, and then saw the Skyline take off at speed from the dairy and crash into the turning station wagon.

[13] That CC should see and recall the collision with such precision and not come forward, but by coincidence be at XK's house visiting her husband a couple of days later and come to be discussing, it is a huge coincidence that cannot be overlooked. While CC may not have recognised the vehicle XK was driving, XK clearly knew that he worked adjacent to the accident site. CC's evidence seems to me to be too good to be true especially given that

it was not made contemporaneously to both parties at the time of the collision. I place no reliance on it.

[14] Both CQ and CQC Insurance stated that the damage caused could not have occurred by the Skyline simply accelerating away from the dairy a short distance away from the intersection.

[15] There was no dispute that XK turned across Z Road or that, as she did so, the vehicle she was driving and the vehicle driven by CQ along Z Road collided.

[16] XK was required to give way.

[17] I find that XK breached her duty to act with reasonable care and due consideration for others. She did not give way to CQ's vehicle which was travelling straight though, not changing lanes and not making a turn.

[18] I find XK negligent.

Are the costs claimed reasonable?

[19] A person who carelessly damages another person's vehicle must pay the cost of putting the other person back into the position they would have been in had the damage not occurred.

[20] The damages are payable to the owner or insurer of the vehicle.

[21] CQ's vehicle was extensively damaged. It was uneconomic to repair as the cost to do so would have exceeded the value of the vehicle prior to the collision.

[22] CQC insurance and CQ have a duty to mitigate XK's loss. As the innocent party they are entitled to recover the lesser of the two (as between the repair estimate and the pre accident value). The cost that can be recovered is the pre-accident value of $3,000.

[23] CQC insurance can also recover the cost of obtaining the pre-accident valuation of $69 which it incurred.

[24] Both of those losses are offset against the net sale proceeds of the wreck of $48.65.

[25] I find the net losses claimed of $3,020.35 established and reasonable. XK is ordered to pay that sum to CQC Insurance.

[26] XK's counterclaim is dismissed. As she was solely negligent she is not entitled to damages or any contribution towards them from CQ.

[27] In any event I note that as XK was not the owner of the station wagon, she would not have been entitled to damages from CQ even if she had brought evidence to establish the pre-accident value of the station wagon, which she did not.