IN THE DISPUTES TRIBUNAL **[2014] NZDT 798**

BETWEEN	**CS** APPLICANT
AND	**CSC INSURANCE LIMITED** APPLICANT'S INSURER
AND	**XI** FIRST RESPONDENT
AND	**XIX** SECOND RESPONDENT
Date of Order:	27 February 2014
Referee:	Referee Costigan

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that the First Respondent to pay the Applicant's Insurer the sum of $4,855.85 on or before 14 March 2014. The First Respondent's counterclaim is dismissed.

Reasons

[1] On 19 January 2013 cars driven by the Second Respondent (but owned by the Applicant) and First Respondent collided on Z Road. The Applicant's insurer has repaired the Applicant's car and wants the First Respondent to pay the cost of those repairs, $4,855.85. The First Respondent has attempted repairs on his car himself, but wants the Second Respondent to pay the costs of the full repairs he says are needed. The First Respondent counterclaims for $2,581.75.

Issues

[2] The issues to be decided are:

a. Did one or other driver fail to take sufficient care while driving?

b. If they did, are the costs claimed a result of that failure and are they reasonable?

Did one or other driver fail to take sufficient care while driving?

[3] On balance I find the First Respondent failed to take sufficient care while driving. I am not satisfied the Second Respondent failed to take sufficient care or contributed to the collision.

[4] The relevant law is the law of negligence. Negligence concerns the duties that one person owes another to take care. If one person breaches a duty that he or she owes to another and causes damage to the other's property as a result, then the person who has breached the duty is liable to pay the cost of putting the other person back into the position they would have been in had the damage not occurred.

[5] In particular all drivers should always anticipate the possible presence of others on the road and need to drive carefully and ensure they keep a careful look out for other vehicles if they are turning.

[6] The First Respondent says the accident occurred when he was stationary in the flush median strip waiting, (but not moving) when he was struck on the front of his vehicle by the Second Respondent. The First Respondent says he believes the Second Respondent drove into him while the Second Respondent was on the wrong side of the road. The First Respondent says the written acknowledgement of his responsibility for the accident was signed by him under threat by the Second Respondent. The First Respondent has also provided written references in support of his driving skills from his employers.

[7] The Second Respondent has given a very different version of events. He says he was on the right side of the road and had been driving towards the First Respondent, when the First Respondent began pulling out from a parked space on the side of the road. The Second Respondent says he took evasive action and swerved towards the flush median but the First Respondent's vehicle still collided with the left rear of his vehicle.

[8] There were no independent witnesses to the accident that were called at the hearing.

[9] I have carefully considered all of the points made by the First Respondent; however on balance I am not persuaded that this accident has been caused (either in whole or in part) by the Second Respondent. I consider that the cause of the accident has been a failure of First Respondent to take care to look for other drivers when he was pulling out to do a u-turn. I say this for the following reasons:

a. I find the damage to the Second Respondent's vehicle to be more consistent with the way he says the accident has happened, rather than the way First Respondent says the accident happened. In particular, I find that the damage to the Second Respondent's car is towards the rear of the vehicle and the biggest point of impact appears to be at the point where the left rear door opens which appears to have been caused following scraping along the side of the Second Respondent's vehicle. Such damage I find is more consistent with a moving car driven by the First Respondent turning into another moving car driven by the Second Respondent.

b. I find the lack of damage to the front left of the Second Respondent's car to be inconsistent with the accident occurring as the First Respondent has suggested. If the Second Respondent had simply driven into the First Respondent the very front of the Second Respondent's vehicle would have

been damaged first and there is no evidence that that part of his car was damaged.

c. There was insufficient evidence of the damage to the First Respondent's vehicle to support his version of how the accident happened. In particular the photographs he provided did not include any exterior shots of the bumper and the photographs were all taken after he had attempted his own repairs on his car first.

d. The First Respondent says that it would be impossible to see where the Second Respondent had come from and that he had checked sufficiently. However on roads such as this, a vehicle may always turn into a lane from a driveway on the other side of the road. This is why the First Respondent needed to ensure he had not only checked his mirrors but also assessed whether or not there were any vehicles in his blind spot or heading in his direction. On the First Respondent's own evidence I am not satisfied he was carefully checking or had checked his blind spot.

[10] I give the admission of liability little weight. The Second Respondent denies having threatened the First Respondent to write it and so the First Respondent has not satisfied me that he was threatened. However I consider given the clearly short time between the accident and the note, the First Respondent may well have been under stress and it would be unwise for me to rely on this note to find liability.

[11] I have considered the First Respondent's references. Although both references note accident free and excellent driving records in the First Respondent's role as a professional driver, those references are of course an opinion on his ability as a driver based on the past experience of the people writing the references. They do no guarantee that the First Respondent will never fail to be careful as a driver and I have found he did fail to take care here.

If they did, are the costs claimed a result of that failure and are they reasonable?

[12] I find the costs claimed by the Second Respondent are a result of damage caused by the First Respondent. Although the First Respondent claims he is not responsible, he had no evidence to suggest that the Second Respondent's costs were not actual and

reasonable. As I have found the First Respondent is liable I find the costs actual and reasonable and I award them in full.