

**BETWEEN**

**CT**  
APPLICANT

**AND**

**CTC INSURANCE LIMITED**  
APPLICANT'S INSURER

**AND**

**XH**  
RESPONDENT

**AND**

**XHX INSURANCE LIMITED**  
RESPONDENT'S INSURER

Date of Order:

2 September 2014

Referee:

Referee Eyre

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that XH is to pay CT's insurer, CTC Insurance Limited, the sum of \$15,000.00 by 5pm Wednesday 24 September 2014.**

### **Reasons**

[1] On 30 October 2013, CT was driving along Z Road when there was a collision between his car and XH's car. XH was starting to turn into a driveway to his right. CT's car was significantly damaged and has since been repaired.

[2] CT claims the sum of \$15,000.00, which is the maximum amount he is entitled to claim in the Disputes Tribunal, towards the total cost of his car repairs which were \$22,566.21.

### **Issues**

[3] The issues to determine are.

- a. Did XH fail to drive to the standard of a reasonable and prudent driver by failing to give way?
- b. If so, what are the reasonable costs of the damage caused that XH is required to pay?

*Did XH fail to drive to the standard of a reasonable and prudent driver by failing to give way?*

[4] The law of negligence imposes a duty of care on all drivers, which requires all drivers to drive to the standard of a reasonable and prudent driver. This standard can be ascertained by referring to the Land Transport (Road User) Rule 2004. That Rule states that a driver who is turning must give way to all traffic that is not turning.

[5] CT and XH both agreed in the hearing that XH was in the process of turning at the time of the collision. The difference in their evidence is that CT stated that XH was turning at the time of the collision, but XH states that he had stopped his turn because he realised CT was coming. XH conceded he may have been over the centre line at the time he stopped. XH also acknowledged in the hearing that his actions contributed to the collision taking place, but that he did not consider it was entirely his fault.

[6] I find that XH did cause the collision, by failing to give way to CT. This finding is made because it is clear that XH was required to give way to CT, but by his own

acknowledgement he had crossed the centre line and started the turn before he realised it was not clear to continue with his turn. This indicates that he did not properly check it was safe for him to carry out the turn before doing so, which means he did not give way. Furthermore, XH's evidence of whether or not he did check the way was clear before starting his turn was not provided in a decisive and clear manner, which suggested that XH was uncertain whether he did in fact check the way was clear before going through or not.

[7] I have had regard to the assertion by XH and his insurer that CT must have been driving too fast for the conditions, which it was suggested is why XH did not see CT before turning. However, CT has given undisputed evidence that between the top of the rise and the point where XH was making his turn there is 370 meters, which CT states is a sufficient distance to have either made the turn or for XH to have seen him and decided to wait till he passed to make the turn. I accept that 370 meters is sufficient distance for XH to have seen CT and waited for him to pass, or to have been able to complete his turn. I also record that XH acknowledged in the hearing that if he had not been so slow to turn he possibly would have made it across. I find that when this evidence is considered cumulatively, it is insufficient for me to justify a finding that CT was driving too fast for the conditions and that this contributed to the cause of the collision.

*If so, what are the reasonable costs of the damage caused that XH is required to pay?*

[8] The law requires drivers who cause damage to another person's vehicle by failing to drive to the standard of a reasonable and prudent driver, to pay the reasonable costs of that damage.

[9] CT claims the cost of repairs to his vehicle up to \$15,000.00 (the actual repair costs were \$22,566.21). The independent assessment of repairs undertaken and the photographs of the damage are consistent with the description of the collision by both parties. XH's insurer acknowledged in the hearing that he did not dispute the repair costs.

[10] As these costs were independently assessed, are consistent with the collision and undisputed, I accept that these are the reasonable costs of damage which XH is required to pay.

[11] I have had regard to the suggestion by XH and his insurer that even if CT's speed didn't contribute to the cause of the collision it may have contributed to the extent of the

damage. However, in the absence of any evidence indicating his speed I am unable to make that finding.

[12] I find that XH is required to pay CT's insurer, CTC Insurance, the sum of \$15,000.00. I am aware that XH is insured so his insurer may pay this sum, but that is a matter to be determined between XH and his insurer.