



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 499

APPLICANT DE

RESPONDENT SC

APPLICANT'S J Ltd
INSURER
(if applicable)

The Tribunal orders:

The claim is dismissed.

Background

1. SC and DE were involved in an accident at the intersection of [Street 1] and [Street 2] on 26 November 2022.
2. The accident took place at night, in rainy conditions. SC was behind DE. Both were attempting to turn right. The intersection is controlled by traffic lights. DE and SC were proceeding on a green arrow when a car came through the intersection from the opposite direction, running a red light.
3. DE braked hard and swerved to his left.
4. SC hit the rear of [DE's car].
5. DE is insured by J Ltd.
6. The claim seeks the cost of repairs to [DE's car], totalling \$10,162.76.
7. There were two hearings by phone. DE participated in the first hearing but not the second. SC participated in both hearings. NT represented J Ltd.

Findings

8. DE / J Ltd's claim holds SC liable for the damage to [DE's car] on the grounds that SC failed to maintain a safe following distance and was unable to stop in time when DE braked heavily.
9. SC submitted that:

- a. When DE braked heavily and swerved to the left, he swerved to the right to avoid him.
 - b. As he did so he hit the vehicle that had run the red light, [car 2].
 - c. The right front corner of [DE's car] hit the right rear side of [car 2].
 - d. The impact pushed his vehicle sideways, and into the back of [DE's car]. [Car 2] drove off.
10. SC's explanation of the circumstances of the accident was supported by his witness NN, who was a passenger in SC's vehicle at the time.
 11. SC provided photographs of [DE's car] . The photographs were taken quite some time after the accident. The photographs show a clear point of impact on the right front corner of [DE's car].
 12. The photographs also show what appears to be an impact on the left front, around the headlight. NT questioned whether the photographs show an impact or simply peeling paint in that area. However I am satisfied that the photographs do show an impact in that area. The paint has been scraped off. There is damage to the license plate on that side that is consistent with an impact.
 13. The photographs are consistent with SC and NN's oral evidence about the circumstances of the accident.
 14. Based on this, my finding is that the driving of SC was not negligent. It is not the case that SC was following too closely behind DE and failed to stop in time. SC swerved to go around DE's vehicle and would have done so successfully if he had not hit [car 2].
 15. The person responsible for the accident, and for the damage to both DE's vehicle and to SC's vehicle is the driver of [car 2].
 16. The claim against SC is dismissed.

Referee: Nicholas Blake
Date: 10 October 2023



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 20 working 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 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working 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>.