



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 671

**APPLICANT**      VL

**RESPONDENT**    U Ltd

**SECOND**            LF Ltd  
**RESPONDENT**

**The Tribunal orders:**

LF Ltd is to pay VL \$5,941.02 within 30 days of the date of this order.

**Reasons:**

1. On 21 April 2022, VL engaged U Ltd to tow his [car] to a repair shop. During the towing, damage was caused to VL's car. A complaint was lodged by VL and U Ltd accepted liability for causing the damage during the tow.
2. VL's car was towed to U Ltd's repairer, LF Ltd to confirm the extent of the damage. LF Ltd confirmed that damage was caused to the car's transmission by incorrect towing. U Ltd instructed LF Ltd to fix the damage caused. The transmission was replaced. U Ltd paid for the repair.
3. At the time the repair was carried out, LF Ltd noticed and informed the customer that there was no oil in the car and that the engine was not turning freely and had to be turned with a pry bar. VL paid \$140.00 for a service and the engine then turned over.
4. Once the gearbox was installed and service completed, an issue was noticed with the starter motor grinding on the edge of the ring gear of the transmission, also known as the flexiplate.
5. This caused a noise which LF Ltd say they notified VL about. U Ltd denied liability for this issue which they said had nothing to do with the towing damage. LF Ltd offered to fix the issue at VL's cost, as it was not part of the damage caused by U Ltd.
6. The cause of the noise at the flexiplate, according to LF Ltd, was that the starter motor was not placed correctly and had damaged the ring gear. VL declined to pay LF Ltd to have the issue fixed and took the car to two other mechanics to have the cause of the noise evaluated. The other mechanics identified the noise as being caused by the starter motor rubbing on the fly wheel.
7. VL claims that U Ltd and/or LF Ltd is liable for the damage as the noise of the starter rubbing on the fly wheel was not present when he gave U Ltd his car.

8. U Ltd and LF Ltd claim the damage caused by incorrect towing has been fixed, and that any other damage to the vehicle was caused by wear and tear and have denied liability for fixing these issues. They say the mounting seal/ring that has caused the motor to be unaligned with the flywheel has nothing to do with the incorrect towing, or the replaced transmission.
9. LF Ltd declined to replace the flexiplate, as they determined the issues was due to a negligent service history rather than to any actions by themselves or U Ltd.
10. At the hearing on 19 January 2023, the parties agreed that the flexiplate on VL's vehicle was damaged but disagreed as to the cause of the damage; whether it was caused by U Ltd's towing service or whether it is due to a lack of oil in the engine caused by the car overheating, or whether the issue was caused by LF Ltd's removal and reinstallation of the transmission during repairs.
11. The matter was adjourned to enable the parties to provide independent expert evidence to support their claims.
12. Neither U Ltd nor LF Ltd were reachable for the hearing today, despite repeated attempts to phone them. Therefore, this hearing went ahead under s42 of The Disputes Tribunal Act 1988. VL provided evidence from expert witnesses that the damage to the vehicle occurred during either the removal or refitting of the transmission by LF Ltd.
13. On balance of probabilities, after hearing from VL's expert 'S' from [parts supplier], I am satisfied that while the damage initially caused by U Ltd's towing was repaired LF Ltd, the damage to the flexiplate was likely to have been caused by LF Ltd, when they removed and reinstalled the transmission.
14. I have taken into account that the car is 11 years old and has over 200,000 kms on the clock and that would not be unusual for it to be experiencing some age-related mechanical issues, which often start to appear after the 100,000 km mark.
15. However, I am satisfied that prior to it being taken to LF Ltd for repair, it did not suffer from this particular problem with the flexiplate, and that it is more likely than not that this issue was caused by the work LF Ltd did on the car.
16. The Consumer Guarantees Act 1993 (CGA) provides guarantees to consumers that services they receive must be provided with reasonable care and skill, and that they must be fit for purpose. Reasonable skill refers to the technical know-how required for the job. Reasonable care refers to how much care is taken to perform the service. Any work done must be at least as good as the work of a competent person with average skills and experience for that type of work. In this case, the work carried out by LF Ltd was not completed with reasonable skill and care, and VL's car was damaged as a result.
17. The CGA provides remedies where a service does not meet a consumer guarantee. These remedies include remedies for damage or work done by a service provider that causes damage to a customer's belongings or property, known as consequential loss. Under these circumstances, the service provider must pay for any damage or other losses caused.
18. VL claims \$639.88 for the diagnostic work carried out on his car by various mechanics and has provided receipts for this work. He has provided a quote for \$2,911.14 from [parts supplier] for the replacement of the car's transmission, which is required to fix the flexiplate issue.
19. VL also claims the amount of money he has spent renting a car from a family member at \$100.00 per week from 21 April 2022 – 6 June 2023. VL has provided a letter in support of this agreement stating that 58 weekly payments of \$100.00 have been made, along with bank statements from 18 April 2022 – 12 June 2023 which he claims evidence the weekly withdrawals of \$100.00. However, I have only been able to ascertain 41 withdrawals that may correspond to the weekly amount of \$100.00 for the rental of the vehicle, totalling \$4,800.00.

20. While VL is entitled to some compensation for the consequential losses associated with the poor service provided by LF Ltd, he is also under a duty to mitigate his losses, which might have been done by purchasing a second-hand vehicle rather than renting a vehicle for a year at the cost of \$100.00 per week. Given the amount VL is claiming for the rental, this might have been cost effective alternative option. Therefore, I am prepared to award VL a total of half of the amount he has paid as evidenced by the bank statements, \$2,400.00, in consequential losses for the car rental.

21. LF Ltd is to pay VL \$5,941.02.

**Referee: Kaho**

**Date: 6 December 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>.