



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1603

APPLICANT XI

RESPONDENT N Ltd

**SECOND
RESPONDENT** T Ltd

The Tribunal orders:

The claim is dismissed.

1. In August 2016, XI had a pacemaker implanted in China, supplied by N Ltd China. In June - August 2020, she experienced health issues while she was visiting New Zealand (NZ). The decision was made to replace her pacemaker and N Ltd supplied it at no cost. However, XI incurred other medical expenses. T Ltd declined her claim for medical cover.
2. XI claims \$11,100.00 for the medical and associated costs associated with her medical care in NZ comprising:
 - a. \$1367.35 for the North Shore Emergency Department visit of 4 June 2020.
 - b. \$585.00 at \$195.00 each for 3 consultations at Shore Care consultations on 29, 30 and 31 August 2020.
 - c. \$800.00 for a St John ambulance service on 30 August 2020.
 - d. \$1367.35 for the North Shore Emergency Department admission on 30 August 2020.
 - e. \$6046.17 for the North Shore Cardiology Department service on 31 August 2020.
 - f. \$880.30 comprising \$440.15 for each of 2 reviews on 20 September 2020 and 18 February 2021.
3. The issues to be determined are:
 - a. Does the Consumer Guarantees Act 1993 apply?
 - i. If so, is N Ltd liable under Consumer Guarantees Act 1993 for the breach of any guarantee concerning the original pacemaker which was supplied by N Ltd China Limited and implanted in China and any reasonably foreseeable consequential loss?
 - b. Is T Ltd liable in contract for the medical expenses incurred by XI on 15 June, 16 June and 19 September 2020 while she was visiting New Zealand?
 - c. If so, what is the remedy?

Does the Consumer Guarantees Act 1993 apply?

4. The Consumer Guarantees Act 1993 (CGA) applies to goods and services supplied in trade to a consumer. There is no question that had the pacemaker inserted in NZ failed, that the CGA would apply. However, this is not case. Instead XI seeks to hold N Ltd, as part of the global N Ltd organisation, liable for the pacemaker supplied and inserted in China.
5. The CGA does not apply to goods or services supplied by a company in trade *outside* NZ to a consumer *outside* of NZ. So, I accept N Ltd's position that as the first pacemaker was implanted in China and was supplied by N Ltd China, that the CGA does not apply. Further, the manufacturer (N Ltd USA) can't be held liable under the CGA, if the CGA does not apply to the supply. Therefore, I do not accept that the CGA applies and so N Ltd is not liable.

Is T Ltd liable in contract for the medical expenses incurred by XI on 15 June, 16 June and 19 September 2020 while she was visiting New Zealand?

6. For a contract to be enforceable there must be agreed terms. The obligation is on the applicant to prove her case on the balance of probabilities.
7. At the second hearing, Mr H representing his mother, acknowledged the evidence from T Ltd trading as [Redacted] that the medical insurance policy had not been entered into until 15 June 2020 which was after the first event. He also accepted that the expenses related to a pre-existing medical condition which had not been disclosed, as required by the terms of the contract.
8. Consequently I accept that T Ltd is not liable under the terms of the contract for any medical expenses incurred.
9. As I find that neither of the Respondents are liable, it is not necessary to determine the remaining issue, and the claim is dismissed.
10. While I have dismissed the claim, I do record that the representative from N Ltd offered to assist the Applicant by facilitating communication with N Ltd China.

Referee: G.M. Taylor
Date: 3 August 2021



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

You can only appeal outside 20 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>.