

**IN THE DISTRICT COURT
AT NEW PLYMOUTH**

**CIV-2015-021-000144
[2016] NZDC 10799**

BETWEEN POWERCO LIMITED
 Plaintiff

AND NADIA LIANNE McCULLOUGH
 Defendant

Hearing: 10 June 2016

Appearances: P McCarthy and S Maskill for the Plaintiff
 No appearance by or for the Defendant

Judgment: 10 June 2016

ORAL JUDGMENT OF JUDGE G P BARKLE

[1] The claim by the plaintiff arises out of a driving incident on 2 June 2012. The defendant, Nadia McCullough, was driving her 1994 Honda Integra motor vehicle registration number [registration number deleted] south along State Highway 3, Stratford. Ms McCullough lost control of the vehicle and as a consequence of that the Honda slid sideways into a fence and two power poles. A power outage throughout the Stratford area was caused. The damage caused by the driving of Ms McCullough required repair works and other incidental attendances to be carried out by the plaintiff company Powerco Limited. The total cost of those necessary repair works was \$15,541.31.

[2] Ms McCullough was prosecuted in respect to the driving referred to earlier. The company sought that the police seek reparation from the District Court but no order was made. Accordingly, the plaintiff issued these proceedings seeking to recoup the cost of the repairs due to the negligent driving and operation of the Honda vehicle by Ms McCullough.

[3] The defendant was served with the statement of claim, notice of proceeding and list of documents on Thursday 3 December 2015. No steps have been taken by Ms McCullough in respect to these proceedings. Accordingly today the plaintiff company seeks judgment in terms of that statement of claim.

[4] An affidavit of Celeste Ann Gardiner has been provided to the Court setting out the background to the claim together with proving the loss that was incurred. The base amount of \$15,541.31 is adequately proved in the affidavit of Ms Gardiner. Having not recovered any amount by way of reparation order the plaintiff company wrote to Ms McCullough enclosing an invoice dated 25 March 2013 for the amount of the costs that it had incurred. That invoice included terms and conditions of payment which included that Ms McCullough should pay the full amount outstanding by the 20th of the month following and if not then interest at eight percent would be chargeable together with payment of any collection costs should that become necessary. There is nothing by way of evidence suggesting Ms McCullough agreed to the terms of payment. A small amount of payment was made by the defendant over a short period which I will refer to shortly.

[5] In seeking judgment today Powerco Limited ask for judgment on the principal sum less the payments that have been made by Ms McCullough of a little over \$800 so net principal amount for which judgment is sought is \$14,650.31. In addition to that interest at eight percent is also sought and as at today that would amount to something just over \$900 together with collection costs of \$3574.49.

[6] I am troubled by granting judgment for the amount of interest claimed and the commission costs. The reason for that is there is no agreement in my view apparent on the part of Ms McCullough to incur those costs. While I acknowledge that Powerco Limited will have paid the amounts involved with the repair and so forth as a result of the accident, I am not of the view that interest and collection costs on recovery of those amounts are within common law principles of damages recoverable on a claim of negligence.

[7] Accordingly, what I intend to do is allow interest pursuant to s 62(B) District Courts Act from 1 May 2013. That date is a little over a month

following the invoice raised by Powerco for the losses incurred as a result of Ms McCullough's driving. It is discretionary when interest pursuant to s 62(B) commences, it often being when the proceedings are initiated. However, giving consideration to all of the background it seems to me in these circumstances that Powerco would have incurred as I say the losses by the time of the invoice being sent to Ms McCullough.

[8] Against that background I now order that judgment be entered against the defendant for the following sums.

1. The balance of the outstanding loss sought of \$14,650.31.
2. Interest in accordance with s 62(B) District Courts Act 1947 from 1 May 2013 until today's date.
3. Costs on a 1A basis as approved by the Registrar and disbursements of \$460.

G P Barkle
District Court Judge