



Civil Resolution Tribunal

Date Issued: June 4, 2020

File: VI-2019-010676

Type: Motor Vehicle

Civil Resolution Tribunal

Indexed as: *Yuen v. City of Richmond*, 2020 BCCRT 621

BETWEEN:

NOK HEI YUEN

APPLICANT

AND:

CITY OF RICHMOND

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a single vehicle accident that took place on August 31, 2019 in Richmond, British Columbia.

2. The applicant, Nok Hei Yuen, says the accident was caused by his vehicle losing control due to an alleged oil spill on a road owned by the respondent, City of Richmond (City). Mr. Yuen says the City failed to adequately maintain the road, resulting in the accident, and that he suffered injuries as a result. In total, Mr. Yuen seeks damages of \$29,847.78, which includes \$5,000 for pain and suffering, \$2,911.38 for vehicle-related expenses, and \$21,946.40 for the original purchase price of his damaged vehicle.
3. The City says there is no evidence Mr. Yuen's accident was caused by an oil spill, and says that even if that were the case, its system of road maintenance and repair within the city is a policy decision which is immune from a tort claim. The City also says its system was adequate in the circumstances. The City asks that Mr. Yuen's claims be dismissed.
4. Mr. Yuen, a lawyer, is self-represented. The City is represented by its in-house legal counsel, Samantha Boyce.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* (ACR) give the tribunal jurisdiction over the determination of liability and damages claims, up to \$50,000.
6. Section 2 of the CRTA states that the tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7. Section 39 of the CRTA says that the tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and written submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is an issue.
8. Section 42 of the CRTA says that the tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

9. The issues in this dispute are: (a) what caused the accident, and (b) whether Mr. Yuen is entitled to his requested damages.

BACKGROUND

10. In a civil claim such as this, Mr. Yuen bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
11. The following facts are undisputed:
 - a. On August 31, 2019 at approximately 8:30am, Mr. Yuen was stopped at a red light northbound on Coppersmith Place in Richmond, intending to turn left onto Steveston Highway westbound. The intersection is a "T-intersection".

- b. When the left turn light turned green, Mr. Yuen commenced his turn. In the middle of the turn, he lost control of his vehicle, and went off the road to the right, off of Steveston Highway.
 - c. Police and paramedics attended the scene.
 - d. Mr. Yuen did not carry collision coverage with his vehicle insurer, and so he has no coverage for repairs to his vehicle. He had his vehicle inspected by a body shop, who estimated the repair cost at \$17,442.31.
12. As referenced above, Mr. Yuen says he lost control of his vehicle due to an oil spill in the middle of the intersection. He says the City was negligent in not having cleaned up the oil spill, and that the City's road maintenance system is inadequate. Mr. Yuen argues the City's policy of a complaints-based maintenance system is an unreasonable operational decision.
13. In contrast, the City says there is no evidence of any oil spill in the intersection, and further says its system of road maintenance and repair is adequate, and in any event is a policy decision which is immune from a tort claim such as Mr. Yuen's. For the reasons that follow, I find I do not need to address the "policy vs. operational" aspects of the parties' submissions in great detail.
14. In support of his claims, Mr. Yuen submitted an accident scene photograph, which he says shows the alleged oil spill. The photograph is generally of the accident intersection, and Mr. Yuen has circled a small portion of the photo which he says is the oil spill. While the distant photo shows various shades of gray on the roadway, I am unable to determine whether the area Mr. Yuen points to was a tire mark, wearing down of the roadway, an oil spill as he alleges, or some other road discolouration. Notably, Mr. Yuen did not provide any close-up photos of the alleged oil. Further, the police report does not mention an oil spill or other hazard in the intersection though Mr. Yuen says he advised them of it.
15. It is undisputed that Mr. Yuen did not report the accident, or the oil spill, to the City until nearly two months later, on October 15, 2019. Mr. Yuen does not explain his

delay in reporting the alleged hazard to the City, except to say he was “in shock” about the accident and did not know “what to do about it” for several weeks after. However, I note Mr. Yuen also says he continued to work five days a week, minimum 10 hours a day during that time. In any event, Mr. Yuen submits he was under no obligation to report the accident or alleged oil spill to the City, except for when he claimed compensation in October 2019. By that time, the City says it tried to investigate, but was unable to determine whether a spill had been present due to the passage of time. As a result, the City internally denied Mr. Yuen’s request for compensation.

16. Based on the evidence before me, I am unable to find there was likely oil in the roadway. I also note that in the circumstances, and given Mr. Yuen is a trained lawyer, I find if an oil spill were present, he would likely have taken timely steps to properly document its presence. For instance, taking a close-up photograph of the alleged oil spill rather than a distant photograph of the intersection where only an indiscernible roadway discolouration is visible, and by immediately notifying the City of the hazard, both of which Mr. Yuen failed to do.
17. Even if I had found there was evidence of an oil spill in the intersection, I find there is insufficient evidence to prove that such a spill caused Mr. Yuen’s accident. I note Mr. Yuen declined to obtain expert evidence. He acknowledges that expert evidence would have been useful in this case, as he explains he spoke to three “forensic engineers”, but ultimately decided a report was too expensive. However, I find this is a matter which requires expert evidence. I say this because I find it is outside ordinary knowledge whether Mr. Yuen’s vehicle left the road due to oil on the road, or whether it was caused by some other factor, as alleged by the City, such as speed, mechanical failure, or an improper turn (see: *Bergen v. Guliker*, 2015 BCCA 283). Further, an expert could provide an opinion on whether, if present, such an oil spill could cause a moving vehicle to lose control. Based on the evidence before me, I am unable to find an oil spill was the cause of Mr. Yuen’s accident.

18. As noted above, Mr. Yuen has the burden of proving his claims on a balance of probabilities. I find Mr. Yuen has failed to prove there was an oil spill on the roadway, and that the oil spill resulted in him losing control of his vehicle and leaving the road. Therefore, I find Mr. Yuen's claims must fail.
19. So, as referenced above, I do not need to consider the parties' arguments about whether the City's system of road inspection and repair was adequate, or whether it constitutes a policy or operational decision, further to *Just v. British Columbia*, 1989 CanLII 16 (SCC). I also do not need to consider Mr. Yuen's claims for non-pecuniary (pain and suffering) damages, special damages, or the costs to assess and repair his vehicle.

FEES, EXPENSES AND INTEREST

20. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Yuen was not successful, I find he is not entitled to reimbursement of his paid tribunal fees. I note the City paid a \$25 response fee, but did not claim it, so I order no reimbursement. Neither party claimed dispute-related expenses.

ORDER

21. I order Mr. Yuen's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair