



Civil Resolution Tribunal

Date Issued: July 3, 2020

File: VI-2020-000360

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Uppal v. Khabra*, 2020 BCCRT 738

BETWEEN:

KULWINDER UPPAL

APPLICANT

AND:

Dalvinder Singh Khabra and Manjot Kaur Khabra

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 28, 2019 in Delta, British Columbia.

2. The applicant, Kulwinder Uppal, and the respondent, Manjot Kaur Khabra, were each attempting to drive eastbound on Cliveden Avenue, just past Carleton Court, when their vehicles collided. Ms. Uppal says she was injured as a result of the accident.
3. Although Ms. Uppal did not identify the respondent Dalvinder Singh Khabra's role in this dispute, I infer Mr. Khabra is an owner of the vehicle Ms. Khabra was driving at the time of the accident.
4. The Insurance Corporation of British Columbia (ICBC) insures both Ms. Uppal and Ms. Khabra. ICBC internally determined Ms. Uppal was 100% responsible for the accident for turning left onto Cliveden Avenue when it was unsafe to do so, contrary to sections 174 and 175 of the *Motor Vehicle Act* (MVA). ICBC is not a party to this dispute.
5. Ms. Uppal says Ms. Khabra should be held 100% responsible for the accident because she says Ms. Khabra unsafely changed lanes into her lane, causing the accident. Ms. Uppal seeks \$3,000 in pain and suffering damages and \$300 for the return of her deductible.
6. Ms. Khabra says ICBC properly assessed fault against Ms. Uppal. Ms. Khabra denies changing lanes, and instead says Ms. Uppal turned left into Ms. Khabra's lane, causing the accident.
7. Ms. Uppal is represented by her husband. The respondents are represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

8. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT 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 CRT jurisdiction over the determination of liability and damages claims, up to \$50,000.

9. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
10. Section 39 of the CRTA says that the CRT 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 submissions before me. Further, bearing in mind the CRT'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 CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
11. Section 42 of the CRTA says that the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

12. The issues in this dispute are:
 - a. Who is liable for the accident?
 - b. What damages, if any, is Ms. Uppal entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant Ms. Uppal 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. I note Ms. Uppal chose not to submit any evidence despite being given the opportunity to do so.

Who is liable for the accident?

14. It is undisputed that on October 28, 2019, at approximately 2:40pm, Ms. Uppal was driving a colleague, GS, home from work. At the same time, Ms. Khabra, who is also a colleague of Ms. Uppal's, was also driving home from work.

15. Ms. Uppal says that she left work, headed southbound on Carleton Court, and then turned left onto Cliveden Avenue eastbound. Carleton Court has a stop sign at the intersection of Cliveden Avenue. Cliveden Avenue is a through highway with two eastbound and two westbound lanes. Ms. Uppal says she was safely established in the left eastbound lane when Ms. Khabra unexpectedly changed from the right eastbound lane into Ms. Uppal's lane, causing the collision.

16. In contrast, Ms. Khabra says she was established in the left eastbound lane of Cliveden Avenue when Ms. Uppal turned from the stop sign at Carleton Court into her lane on Cliveden Avenue, striking her vehicle. As noted above, Ms. Khabra denies changing lanes.

17. The photographs in evidence show that the front right corner of Ms. Uppal's vehicle and the left rear corner panel of Ms. Khabra's vehicle collided.

18. An ICBC Material Damage Estimator, Julie Centrone, reviewed the two vehicles' damage, and determined the damage was consistent with either parties' version of events. I do not need to address the fact that this is not expert evidence under the CRT's rules, as I find this evidence is of no assistance, and so give it no weight.

19. Ms. Uppal's passenger, GS, provided a signed statement to an independent adjuster hired by ICBC in early 2020. In his statement, GS said Ms. Uppal was driving him home from work on October 28, 2019. He said Ms. Uppal left the work parking lot and was turning left onto Cliveden Avenue, when "in the middle of the left turn" Ms. Uppal's vehicle was struck by another vehicle (Ms. Khabra's). GS said he did not see Ms. Khabra's vehicle before the accident as he was not looking.
20. Ms. Uppal argues GS's statement should not be relied upon. First, she says the statement was given over a month after the actual accident. Second, Ms. Uppal says GS contacted her after he gave his statement and that GS told her he had told ICBC "what he thought they wanted to hear". I do not accept Ms. Uppal's submissions about GS's evidence. First, apart from Ms. Uppal's bare assertion that the statement should not be relied upon, there is no evidence supporting Ms. Uppal's allegations about GS's credibility. Further, Ms. Uppal was at liberty to submit her own witness statement from GS, if GS had told her something different from the statement he gave to ICBC. However, as noted above, Ms. Uppal elected not to provide any evidence in support of her claim, despite being given the opportunity to do so. On balance, I find GS's signed statement is credible and is consistent with Ms. Khabra's version of events.
21. Based on the above, on balance, I find Ms. Uppal was not established in the left lane at the time of the accident, but instead was still making her left turn onto Cliveden Avenue when the accident happened. I also find there is insufficient evidence that Ms. Khabra made a lane change. I find Ms. Khabra was established in the left lane when the accident occurred.
22. Section 175 of the MVA states that if a vehicle is about to enter a through highway, the driver must yield the right of way to traffic that is already in the intersection or is approaching so closely that it constitutes an immediate hazard.
23. Here, Ms. Uppal was the driver about to enter a through highway, Cliveden Avenue. I find Ms. Uppal did not yield the right of way to traffic already on Cliveden Avenue,

in breach of section 175 of the MVA. As a result, I find Ms. Uppal solely responsible for the accident. Therefore, I dismiss Ms. Uppal's claims for damages.

24. Given my conclusions above, I do not need to consider Ms. Uppal's claim for damages in any detail. However, I do note that despite claiming compensation for personal injuries and for reimbursement of her deductible, as noted above Ms. Uppal did not provide any evidence in support of her claim, such as any medical documentation or proof of a paid deductible. For this reason, even if I had found Ms. Khabra responsible for the accident, I would have dismissed Ms. Uppal's claims for damages.

FEES, EXPENSES AND INTEREST

25. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Ms. Uppal was not successful, I find she is not entitled to reimbursement of her tribunal fees. I also note Ms. Uppal claimed \$5,000 in dispute-related expenses for "stress caused by this incident". This is not a proper claim for "dispute-related expenses". However, nothing turns on this given my findings above. I dismiss this claim, but again note Ms. Uppal did not provide any evidence in support of it.
26. As the respondents were successful, they are entitled to reimbursement of their paid tribunal fees. Mr. and Ms. Khabra each paid a \$25 response fee. I order Ms. Uppal to reimburse the respondents \$50 in tribunal fees.

ORDERS

27. Within 30 days of the date of this decision, I order the applicant, Kulwinder Uppal, to pay the respondents, Dalvinder Singh Khabra and Manjot Kaur Khabra, a total of \$50 for reimbursement of tribunal fees.
28. The respondents are also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

29. Ms. Uppal's claims are dismissed.

30. Under section 57 and 58 of the CRTA, a validated copy of the tribunal's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a tribunal order has the same force and effect as an order of the court that it is filed in.

Andrea Ritchie, Vice Chair