



Civil Resolution Tribunal

Date Issued: May 22, 2020

Files: VI-2019-010176
and VI-2019-010177

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Bajracharya v. Rahul*, 2020 BCCRT 564

BETWEEN:

BIKESH BAJRACHARYA

APPLICANT

AND:

SHARMA RAHUL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (tribunal) about liability for a motor vehicle accident that occurred on August 14, 2019 between the applicant, Bikesh Bajracharya, and the named respondent, Sharma Rahul.

2. The applicant filed two related motor vehicle disputes with the tribunal: 1) a request that the tribunal determine whether the applicant's injuries are "minor injuries" under the *Insurance (Vehicle) Act* (dispute VI-2019-010176), and 2) a claim for a liability determination and damages resulting from the accident (dispute VI-2019-010177).
3. The parties' insurer, the Insurance Corporation of British Columbia (ICBC), internally concluded the applicant was 100% at fault for the accident. ICBC is not a party to either dispute.
4. For the purpose of this decision, I have been asked to determine liability for the accident. This is because, if I find the applicant is 100% liable for the accident, there is no further claim for damages and no need for a minor injury determination, which relates directly to damages. If I find the applicant is not 100% responsible for the accident, the above-noted disputes may continue through the tribunal process. For the reasons that follow, I dismiss both the above-noted disputes.
5. The applicant is self-represented. The respondent is represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

6. These are the tribunal's formal written reasons. 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)(b) of the CRTA gives the tribunal jurisdiction over the determination of whether an injury is a "minor injury" under the *Insurance (Vehicle) Act*. Section 133(1)(c) of the CRTA and section 7 of the *Accident Claims Regulation* give the tribunal jurisdiction over the determination of liability and damages in an accident claim, up to \$50,000.
7. 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.

8. 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.
9. 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.

ISSUE

10. The issue in this decision is who is responsible for the accident and, if it is the applicant, whether his claims for a minor injury determination and for damages should be dismissed.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant 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.

12. As noted above, this final liability decision is about a motor vehicle accident that occurred on King George Boulevard near 72nd Avenue in Surrey, British Columbia. The following facts are undisputed:
- a. The accident occurred around 6:15pm on King George Boulevard.
 - b. The applicant was initially westbound on 72nd Avenue when he turned left onto King George Boulevard southbound, intending to immediately turn right into the nearby gas station.
 - c. The respondent was initially eastbound on 72nd Avenue, and turned right onto King George Boulevard southbound.
 - d. No witness statements or dash cam footage is available.
13. The parties disagree about the accident details. The applicant says that he safely turned from the 72nd Avenue left turn lane into the middle southbound lane (lane 2 of 3) on King George Boulevard. The applicant says he then signalled and moved into the right-most curb lane (lane 3 of 3) to make an immediate right into the gas station. He says he was angled to turn into the gas station's driveway, but had to stop for a passing pedestrian. The applicant submits he was stopped for approximately 50 seconds when he was struck from behind by the respondent.
14. In contrast, the respondent says that as he was turning right onto King George Boulevard, he was the one who had to stop for a pedestrian at the crosswalk in the dedicated right turn lane. After the pedestrian crossed, the respondent says he continued in the right curb lane when the applicant suddenly turned into his lane (lane 3 of 3) and the collision occurred.
15. The applicant says the respondent should be held 100% responsible because the respondent struck his vehicle from behind. Neither party submitted expert evidence on how the collision may have occurred. On the respondent's behalf, ICBC submitted a brief statement made by its employee, Suresh Lal, a manager from its Material Damage department. I find the technical requirements for expert evidence are not met because Mr. Lal's qualifications are not in evidence before me.

However, it is undisputed it is his job to assess the condition of post-accident vehicles and that he is competent in that role. After reviewing the two vehicles' damage, Mr. Lal noted that the damage indicates the applicant's vehicle was in motion at the time of the accident, not stopped as the applicant submits.

16. While I do not accept Mr. Lal's statement as expert evidence, his observations are consistent with my own in terms of the location of the vehicles' damage, which I find is more consistent with the respondent's version of events. On my review of the photographs of both vehicles' damage, the applicant was struck on the right rear wheel by the respondent's left front bumper.
17. Although the applicant suggests the damage location is due to his vehicle being angled towards the gas station driveway, I do not accept that submission. The applicant did not provide a diagram of his vehicle's location before impact. Rather, from his submitted description and photographs of the accident scene, I find, after turning left, the applicant likely would have had to quickly move across three lanes of traffic on southbound King George Boulevard to reach the gas station driveway, which is only a short distance from the intersection. The applicant admittedly turned into the middle lane, and I find he then still had to quickly manoeuvre into the curb lane to reach the driveway.
18. I find this scenario, coupled with the damage locations on the vehicles, means it is more likely that the applicant cut off the respondent, rather than the applicant already being stopped in the curb lane and angled into the driveway. In other words, I find the respondent's version of events more likely, that the applicant unsafely changed into the curb lane as he tried to reach the gas station driveway after having just turned left.
19. Section 151 of the *Motor Vehicle Act* (MVA) says that a driver must not move from one lane to another unless the movement can be done with safety and will in no way affect the travel of another vehicle. Here, I find the applicant attempted a lane change when it was unsafe to do so, given the proximity of the respondent's vehicle. So, I find the applicant is therefore 100% liable for the accident.

20. As I have found the applicant solely responsible for the accident, it follows that he is not entitled to damages resulting from the accident. Therefore, I dismiss both the related minor injury determination and damages disputes.
21. 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. I see no reason to deviate from that general rule. As the applicant was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. The respondent paid \$25 as a response fee for each of the two disputes, and I find he is entitled to reimbursement of the \$50 paid. If ICBC paid the fees on the respondent's behalf, I leave it to ICBC to address that with the respondent. Neither party claimed dispute-related expenses.

ORDERS

22. Within 30 days of the date of this decision, I order the applicant, Bikesh Bajracharya, to pay the respondent, Sharma Rahul, a total of \$50 for reimbursement of tribunal fees.
23. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
24. I order the applicant's claims in disputes VI-2019-010176 and VI-2019-010177 dismissed.

Andrea Ritchie, Vice Chair