



Civil Resolution Tribunal

Date Issued: October 20, 2020

File: VI-2020-003776

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Khanna v. Okamoto*, 2020 BCCRT 1181

BETWEEN:

VANITA KHANNA

APPLICANT

AND:

ANNE KRISTAL OKAMOTO and INSURANCE CORPORATION OF
BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on April 13, 2019 in Vancouver, British Columbia.

2. The applicant, Vanita Khanna, says the respondent, Anne Kristal Okamoto, is responsible for the accident, and seeks personal injury damages as a result. Ms. Khanna seeks a total of \$12,500 in damages, including \$5,500 for non-pecuniary (pain and suffering) damages, \$3,000 for “rehabilitation costs”, and \$4,000 for her vehicle’s value, because she says the vehicle was “written off” due to the accident. Ms. Okamoto denies liability for the accident, and says Ms. Khanna is not entitled to any damages. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both individual parties.
3. Ms. Khanna is self-represented. The respondents are both represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

4. 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)(a) of the CRTA gives the CRT jurisdiction over the determination of entitlement to accident benefits. Section 133(1)(b) of the CRTA gives the CRT 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* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to \$50,000.
5. 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.
6. 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.

7. 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.

Claim revision

8. In her reply submissions, Ms. Khanna argued her claims for compensation for non-pecuniary damages and for rehabilitation costs should actually be tripled, given that her two minor children were also passengers in her vehicle at the time of the accident. Therefore, Ms. Khanna says her claim for non-pecuniary damages should total \$16,500 and her claim for accident benefits should be \$9,000. Given the issue was only raised in reply, the respondents were not given an opportunity to respond to Ms. Khanna's request for increased compensation. However, nothing turns on that because Ms. Khanna's children are not parties to this dispute, and so I find Ms. Khanna cannot claim for damages on their behalf in this proceeding.

ISSUES

9. The issues in this dispute are:
 - a. Is Ms. Khanna entitled to any benefits from her insurer ICBC resulting from the accident?
 - b. Who is responsible for the April 13, 2019 accident?
 - c. What damages, if any, is Ms. Khanna entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Khanna, as 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.
11. Ms. Khanna did not specify which claims were against which particular respondent. I will deal first with Ms. Khanna's claims against ICBC, and then with her claims against Ms. Okamoto. Given the nature of Ms. Khanna's dispute, her claim for "rehabilitation costs" may include a claim about her entitlement to medical benefits from ICBC as her insurer. Similarly, her claim for reimbursement of her vehicle's value may be a claim for coverage under her contract of insurance with ICBC.

Is Ms. Khanna entitled to any benefits from her insurer ICBC resulting from the accident?

12. Under section 133(1)(a) of the CRTA, the CRT has exclusive jurisdiction to determine a party's entitlement to accident benefits resulting from an accident that occurred on or after April 1, 2019. Ms. Khanna claims \$3,000 for "rehabilitation costs". From the evidence, I find Ms. Khanna has not attended for any medical treatment apart from one doctor's visit on August 9, 2020, nearly 16 months after the accident. In the clinical record from that date, the doctor noted Ms. Khanna was "in mva in April" and, despite an otherwise normal exam, diagnosed "muscular neck pain" and recommended physiotherapy.
13. ICBC says Ms. Khanna has not proven any injury, and that a vague doctor's note 16 months post-accident is insufficient to prove any entitlement to benefits. In response, Ms. Khanna says ICBC is mistaken that she waited 16 months to seek treatment, and says she would have sought treatment earlier, but that facilities were closed due to the COVID-19 pandemic. While I accept that treatment facilities may have closed following the initial COVID-19 pandemic, I also note that for nearly one year after the accident, COVID-19 was not an issue relating to Ms. Khanna's access to treatment.

In any event, I find Ms. Khanna forfeited her right to any insurance coverage, including for accident benefits or for coverage for her damaged vehicle, due to breaching the conditions of her license. My reasons follow.

14. It is undisputed that at the time of the accident, Ms. Khanna possessed a learner's license, though its date of issue is not before me. *Motor Vehicle Act Regulation* section 30.06 says that a person with a learner's license must not operate a motor vehicle unless the person is accompanied by another person who is at least 19 years of age (or 25, depending on the learner's license issue date), holds a valid and subsisting driver's license, and occupies the seat beside the operator.
15. In her Dispute Notice, Ms. Khanna stated that at the time of the accident, she had her two children and "a friend" in the car with her. In contrast, the respondents say Ms. Khanna was alone in the vehicle with her two minor children, and there was no qualified supervising adult, as required. As a result, ICBC says Ms. Khanna breached section 55(3) of the *Insurance (Vehicle) Regulation* (IVR), and is therefore not entitled to any benefits from ICBC. I agree.
16. Section 55(3) of the IVR states, among other things, that an insured must not operate a vehicle if the insured is not authorized or qualified by law to do so.
17. Despite initially claiming there was "a friend" in the vehicle with her, Ms. Khanna did not provide a name, statement, or any details about that friend. Additionally, in her submissions, Ms. Khanna did not deny she was alone in the vehicle with her minor children at the time.
18. Further, dash camera footage from Ms. Okamoto's car shows only 3 occupants in Ms. Khanna's vehicle: a young female passenger in front seat, and a young male passenger in the backseat, and Ms. Khanna as the driver. The respondents also submitted a cell phone video taken at the scene by Ms. Okamoto, which depicts Ms. Khanna and her two young children. In the video Ms. Okamoto asked Ms. Khanna to confirm she was driving the vehicle, that she possessed a learner's license, and that

she was the only licensed driver in the vehicle, all of which Ms. Khanna agreed to in the video.

19. Ms. Khanna does not deny that it is her in the video, or that what is presented in the video is true and accurate. Instead, Ms. Khanna argues Ms. Okamoto did not have her consent to videotape her and her children. Based on the material before, there was nothing illegal about Ms. Okamoto's videotaping Ms. Khanna in a public place, and I accept the cell phone video evidence.
20. Given all of the circumstances, I find Ms. Khanna and her underage children were alone in the vehicle at the time of the accident, contrary to the conditions of Ms. Khanna's learner's license. As such, without a qualified supervising accompanying passenger, Ms. Khanna was not authorized or qualified by law to operate the vehicle (see: *King v. Insurance Corp. of British Columbia*, 2010 BCSC 1740), in breach of section 55(3) of the IVR. Under section 55(1.1) of the IVR, ICBC is not liable to an insured who breaches a condition of section 55. Therefore, Ms. Khanna is not entitled to no-fault (Part 7) benefits or reimbursement for her vehicle from ICBC. I dismiss Ms. Khanna's claims against ICBC.
21. I turn then to Ms. Khanna's claims against Ms. Okamoto.

Who is responsible for the April 13, 2019 accident?

22. Ms. Khanna and Ms. Okamoto have completely different versions of the accident. Ms. Khanna said that she was traveling eastbound on East Cordova Street in Vancouver, intending to turn left onto northbound Main Street. Ms. Khanna said Ms. Okamoto was traveling westbound on East Cordova Street, ran the red light at Main Street, and struck Ms. Khanna's vehicle violently on the right passenger side. Ms. Khanna alleges the accident would have been avoided if Ms. Okamoto properly observed the red light, was not speeding, and was paying attention to her surroundings.
23. In stark contrast to Ms. Khanna's evidence, Ms. Okamoto says that she was at a stop light northbound on Main Street at East Cordova Street, in the right lane of two

straight-through travel lanes. There was a taxi vehicle in the northbound lane to Ms. Okamoto's left. When the traffic light for northbound Main Street traffic turned green, Ms. Okamoto says she started through the intersection and Ms. Khanna entered the intersection on a red light, proceeding straight-through eastbound on East Cordova Street, and Ms. Okamoto struck Ms. Khanna's right passenger side.

24. Ms. Okamoto submitted her dash camera footage, which I find entirely supports Ms. Okamoto's version of events. It clearly shows Ms. Khanna entering the intersection eastbound on East Cordova Street while Main Street traffic had a solid green light, and narrowly missing being struck by the taxi to Ms. Okamoto's left. That means Ms. Khanna entered the intersection while the traffic signal for her was red. Additionally, Ms. Khanna was clearly not attempting a left hand turn onto Main Street, but rather was continuing straight-through on East Cordova, a one-way street. It further shows that Ms. Okamoto was not westbound on East Cordova, but was traveling northbound on Main Street.
25. In her submissions Ms. Khanna argues the dash camera footage is "irrelevant" and not reliable, because the date and time indicated on the footage are incorrect. Ms. Khanna also says she was not notified Ms. Okamoto had a dash camera because there was no "notice" posted to her front windshield. Notably, Ms. Khanna does not dispute the accident depicted in the footage is the correct accident, or that it is indeed her vehicle shown. Despite this, Ms. Khanna maintains she is seeking a settlement for her alleged pain and suffering.
26. Overall, I find Ms. Khanna's evidence is not credible. The dash camera footage suggests Ms. Khanna has been untruthful in her statements about the accident details, as well as who was present in her vehicle at the time of the accident. Ms. Okamoto admits the date and time on the dash camera footage is incorrect, but says that is because the dash camera was recently purchased and had not been properly set up with those details. I accept Ms. Okamoto's explanation, and given Ms. Khanna does not dispute it is her vehicle depicted in the footage, I find nothing turns on the incorrect date and time in any event. Taking everything into consideration, I give Ms.

Khanna's evidence no weight, and I accept Ms. Okamoto's version of events, which is consistent with the video footage.

27. So, who is responsible for the April 13, 2019 accident? Section 129 of the *Motor Vehicle Act* says the driver of a vehicle approaching a red light must cause the vehicle to stop before entering the intersection, and must not proceed until a traffic control signal instructs the driver they are permitted to do so. Here, as noted above, I find Ms. Khanna entered the intersection on a red light, contrary to section 129. The dash camera footage shows Ms. Okamoto's light was green for 3 to 4 seconds before Ms. Khanna negligently entered the intersection. I find Ms. Khanna solely responsible for the accident.
28. Despite Ms. Khanna's claims that Ms. Okamoto was speeding or otherwise driving recklessly, I find that is not supported by the evidence. I find Ms. Okamoto bears no responsibility for the April 13, 2019 accident.
29. As I have found Ms. Khanna solely responsible for the accident, it follows that her claim for damages must be dismissed. Therefore, I do not need to address it in any detail. I dismiss Ms. Khanna's claims in their entirety.

FEES, EXPENSES AND INTEREST

30. 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. Ms. Khanna was unsuccessful, but also did not pay any fees. Each of the respondents paid \$25 as a response fee, which I find Ms. Khanna must reimburse them for.

ORDERS

31. Within 14 days of the date of this decision, I order the applicant, Vanita Khanna, to pay the respondents, Anne Kristal Okamoto and Insurance Corporation of British Columbia, \$25 each for reimbursement of tribunal fees.

32. The respondents are also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
33. Ms. Khanna's claims are dismissed.
34. Under section 57 and 58 of the CRTA, a validated copy of the CRT'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 CRT order has the same force and effect as an order of the court that it is filed in.

Andrea Ritchie, Vice Chair