



Civil Resolution Tribunal

Date Issued: January 7, 2021

File: VI-2020-001855

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Goertzen v. Kuemper-Sotvedt*, 2021 BCCRT 11

BETWEEN:

ARIANA GOERTZEN

APPLICANT

AND:

TARYN KUEMPER-SOTVEDT 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 June 4, 2019 in Kelowna, British Columbia.

2. The applicant, Ariana Goertzen, was driving a Toyota Tercel owned by her and her sister, AG, eastbound on Springfield Road, attempting to turn left onto Spall Road. At the same time, the respondent, Taryn Kuemper-Sotvedt, was driving a Honda Civic owned by her mother CK. Ms. Kuemper-Sotvedt was traveling westbound, straight through, on Springfield Road. The two vehicles collided in the intersection, and Ms. Goertzen says she was injured as a result.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both parties.
4. Ms. Goertzen says Ms. Kuemper-Sotvedt should be held solely responsible for the accident for entering the intersection on a red light. In contrast, Ms. Kuemper-Sotvedt says Ms. Goertzen is mostly responsible for the accident for failing to yield the right of way when turning left. The parties agree that, subject to the liability assessment, Ms. Goertzen's damages total \$6,410.05, including \$5,000 for non-pecuniary (pain and suffering) damages and \$1,410.05 for vehicle damage.
5. Ms. Goertzen is self-represented. The respondents are both represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

6. 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)(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.
7. 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.

8. 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. Some of the evidence in this dispute amounts to a “she said, she said” scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
9. 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.

Claims against ICBC

10. Ms. Goertzen named ICBC as a respondent in this dispute, alleging it mishandled her claim as her insurer. Under section 133(1)(c) of the CRTA, the CRT has jurisdiction to decide liability and damages in motor vehicle injury claims, up to \$50,000. Claims under section 133(1)(c) are claims in negligence, properly brought against the other parties involved in the accident (here, Ms. Kuemper-Sotvedt), not the involved insurer (see: *Kristen v. ICBC*, 2018 BCPC 106). To the extent Ms. Goertzen is alleging ICBC breached its statutory obligations or contract of insurance, the CRT does not have authority under its motor vehicle injury jurisdiction to hear such a claim, but it may fall

within the CRT's small claims jurisdiction, subject to the CRT's small claims monetary limit. As such, I invited submissions from the parties and ultimately directed CRT staff to transfer Ms. Goertzen's claim against ICBC to the CRT's small claims jurisdiction, and that dispute (SC-2020-007679) is the subject of a separate, but related, decision. As a result, no claims or requested remedy remain against ICBC in the liability and damages dispute, so I dismiss Ms. Goertzen's claims against ICBC in this motor vehicle injury dispute.

ISSUES

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

BACKGROUND

12. In a civil claim such as this, Ms. Goertzen, 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.

Who is responsible for the accident?

13. It is undisputed that on June 4, 2019, at approximately 4:00 pm, Ms. Goertzen was traveling eastbound on Springfield Road, stopped in the dedicated left turn lane, to turn left onto northbound Spall Road. Ms. Goertzen had two passengers, MO, a family friend, in the front passenger seat, and AG, Ms. Goertzen's sister, directly behind MO. It is undisputed the weather was clear and the roads were dry.
14. Springfield Road is comprised of 3 lanes in each direction, east and west, at Spall Road. Each direction has two "through-lanes" and a left turn lane.

15. When Ms. Goertzen entered the left turn lane, there was one vehicle ahead of her. She says that vehicle turned, and she moved into the intersection while the light for east and westbound traffic on Springfield Road was still green. Shortly after entering the intersection, Ms. Goertzen says the traffic light turned yellow, and then red. She says traffic in the westbound outside curb lane stopped, as well as the vehicles in the westbound left turn lane.
16. After seeing westbound vehicles had stopped, Ms. Goertzen says she commenced her left turn to clear the intersection, but when she pulled out further, she noticed a vehicle, driven by Ms. Kuemper-Sotvedt, traveling quickly in the westbound inside through lane. Ms. Goertzen says she slammed on her brakes, but Ms. Kuemper-Sotvedt continued through the intersection on a red light, colliding with Ms. Goertzen's stopped vehicle.
17. It is undisputed Ms. Kuemper-Sotvedt did not stop or slow her vehicle after the accident, but continued through the intersection while Ms. Goertzen made a U-turn to follow her to a nearby parking lot.
18. Ms. Kuemper-Sotvedt's version of the accident is somewhat different. She says that as she approached Spall Road, the light turned yellow when she was approximately 1.5 car lengths back from the intersection. As she was traveling 60 km/h, Ms. Kuemper-Sotvedt determined she was too close to the intersection to stop safely, so she continued through the yellow light, and says that Ms. Goertzen unsafely turned left in front of her. In her statement to ICBC, Ms. Kuemper-Sotvedt also said that another vehicle in front of Ms. Goertzen turned left immediately in front of Ms. Kuemper-Sotvedt, but that she was able to honk at them and avoid the collision.
19. There were essentially 5 non-driver witnesses to the accident: AG and MO in Ms. Goertzen's vehicle, DW, who was the first vehicle stopped westbound on Springfield Road at Spall Road in the curb lane, SS, a pedestrian on the northwest corner of the intersection, and JF, another pedestrian.
20. JF stated she did not see the accident, but only looked after she heard the collision.

21. MO, Ms. Goertzen's front seat passenger, apparently suffers from health issues and was unable to provide a statement about the accident.
22. AG provided a statement that is largely consistent with Ms. Goertzen's.
23. DW and SS each provided two statements, which I will address in some detail.
24. In DW's first statement to ICBC, provided by phone on June 5, 2019, he stated he witnessed the accident when he was stopped westbound on Springfield Road at Spall Road, in the outside curb lane. DW said Ms. Kuemper-Sotvedt's vehicle went by his while the light was yellow, and then, when the light turned red, her vehicle passed into the intersection and struck Ms. Goertzen's. He estimated Ms. Kuemper-Sotvedt was traveling approximately 60 km/h. DW also advised ICBC in that call that he knew MO, but was not aware he knew him until he provided his statement to Ms. Goertzen.
25. DW provided a signed, written statement on February 2, 2020. In that statement he stated he was traveling westbound on Springfield Road when the traffic light at Spall Road changed to yellow and then to red. He advised he was able to come to an "easy" stop. DW stated after the light turned red, Ms. Goertzen started her left turn to clear the intersection. At the same time, he noticed a car in the lane immediately to his left (Ms. Kuemper-Sotvedt) drive past him quickly into the intersection. DW says he had been at a complete stop at the red light for a few seconds before Ms. Kuemper-Sotvedt entered the intersection and the collision occurred. DW said Ms. Kuemper-Sotvedt did not slow her vehicle at all before entering the intersection on the red light, or even after the accident when she proceeded to clear the intersection. DW explained he did not know either of the drivers involved in the accident, and had no financial interest in the accident at all.
26. SS provided her first statement to ICBC by phone on June 4, 2019. In that statement she noted she was not paying attention to either vehicle until she heard the collision. She further stated she did not look at the traffic light, and could not say what colour the light was, but she guessed it was either green or yellow. SS noted Ms. Kuemper-

Sotvedt's vehicle "was going really fast" and did not stop after the accident happened, causing Ms. Goertzen to have to make a U-turn to follow her.

27. SS provided a signed, written statement on October 29, 2019. In that later statement, SS stated the light was green for east and westbound traffic on Springfield Road when Ms. Goertzen started her left turn and Ms. Kuemper-Sotvedt, heading westbound, entered the intersection and struck Ms. Goertzen. SS again stated Ms. Kuemper-Sotvedt was "going at a fast rate of speed". SS estimated Ms. Kuemper-Sotvedt's speed "was a factor" in the accident, but stated she was "sure the light was green at the time of the collision".
28. Although the respondents say SS is a "truly independent witness" while DW is not, I disagree. The evidence is that although DW knew a passenger in Ms. Goertzen's vehicle, he provided his first statement before realizing this. Additionally, there is no evidence that DW previously knew Ms. Goertzen or has any interest in the outcome of this dispute at all. I prefer DW's evidence over SS's. I say this because I find DW's two statements consistent between themselves, as well as the evidence of Ms. Goertzen and AG. I find SS's two statements are inconsistent in her specific recollection of seeing the two vehicles before the accident, and in her recollection of the traffic light being green, which is inconsistent with any of the other evidence. I disagree with the respondents' submission that DW and SS's statements "cancel each other out" simply because they are inconsistent. As noted above, I prefer DW's evidence.
29. Additionally, I prefer the evidence of Ms. Goertzen to Ms. Kuemper-Sotvedt. Ms. Kuemper-Sotvedt's version of events including nearly avoiding an accident with a vehicle immediately in front of Ms. Goertzen is not consistent with any other evidence before me. I do not accept Ms. Kuemper-Sotvedt's recollection of events, and therefore I find her evidence is less reliable overall.
30. Given the evidence, on balance, I find Ms. Kuemper-Sotvedt entered the intersection on a red light, and was admittedly traveling above the posted speed limit, discussed below.

31. I turn then to the relevant provisions of the *Motor Vehicle Act* (MVA):
- a. Section 129 says that when a traffic light turns red, a vehicle approaching the red light must stop before entering the intersection.
 - b. Section 174 says that a driver intending to turn left at an intersection must yield the right of way to traffic approaching from the opposite direction that is in the intersection, or is so close as to constitute an immediate hazard.
32. As stated in *Kabir v. Simpson*, 2016 BCSC 1594, if an intersection traffic light is green, the through driver has the right of way, while if the light is red, the through driver must stop prior to entering the intersection. Where the light is yellow, it must first be determined who the dominant driver was. As noted above, I have found that the traffic light for east and westbound traffic on Springfield Road was red at the time Ms. Kuemper-Sotvedt entered the intersection.
33. In *Kokkinis v. Hall*, 1996 CanLII 2404 (BCCA), the court stated that a yellow light is not a signal to accelerate or pass traffic that is slowing to a stop. Here, the evidence is that Ms. Kuemper-Sotvedt approached the intersection at 60 km/h, 10km/h above the posted speed limit. Even though the light turned yellow, she admittedly did not slow down. DW noted he saw no brake lights as Ms. Kuemper-Sotvedt passed his stopped vehicle. I am satisfied Ms. Kuemper-Sotvedt was attempting to “beat” the yellow light, ignoring the fact that traffic around her had already stopped for the red light. As a result, I find Ms. Kuemper-Sotvedt entered the intersection on a red light when it was unsafe to do so, contrary to section 129 of the MVA. I find she is responsible for the accident.
34. Although there is generally a “heavy onus” on left turning drivers, as argued by Ms. Kuemper-Sotvedt, left turning drivers are also entitled to assume that others will obey the rules of the road, such as stopping at a red light as required by section 129 of the MVA (see: *Brucks v. Caslavksy*, 1994 CanLII 3116 (BCCA), and *Lam v. Cumming*, 2002 BCSC 1413).

35. Here, I find Ms. Goertzen appropriately yielded the right of way to oncoming traffic westbound on Springfield Road while the light was green, waited for traffic to stop when the light turned yellow and then red, and then safely started her left turn, in compliance with section 174 of the MVA. Therefore, I find Ms. Goertzen's bears no responsibility for the June 4, 2019 accident. I find Ms. Kuemper-Sotvedt 100% responsible.

36. I turn then to Ms. Goertzen's claimed damages.

Damages

37. Ms. Goertzen submits that, as a result of the accident, she sustained injuries to her shoulders and neck, and suffered from headaches. Ms. Goertzen said she received massage therapy treatment and started to feel "back to normal" after about 4 to 5 months. Given the parties' agreement on damages, no evidence was provided about the details of Ms. Goertzen's injuries, including any photos or any indication about the injuries' duration. As noted above, the parties agree that Ms. Goertzen's non-pecuniary damages, also known as "pain and suffering", total \$5,000. This figure is within the \$5,500 cap applicable for a "minor injury" as defined in the *Insurance (Vehicle) Act* (IVA). The parties did not expressly agree whether Ms. Goertzen's injuries are "minor injuries" as defined by section 101 of the IVA. However, given the parties' agreement about damages within the applicable "minor injury cap", I do not need to determine whether the injuries are in fact "minor injuries". As I have found Ms. Kuemper-Sotvedt solely responsible for the accident, I find Ms. Goertzen is entitled to the full \$5,000 that the parties have agreed upon.

38. The parties also agree Ms. Goertzen's vehicle damage is valued at \$1,410.05. I order Ms. Kuemper-Sotvedt to pay this amount as well. Invoices in evidence show Ms. Goertzen has paid \$501.56 towards her vehicle repairs between March 7 and April 24, 2020. On a judgment basis, I find she is entitled to pre-judgment interest under the *Court Order Interest Act* on the \$501.56, from April 24, 2020. This totals \$2.99. As there is no evidence the remaining \$908.49 in repairs has yet been paid, I decline to order pre-judgment interest on this amount.

39. Further to section 2 of the *Court Order Interest Act*, pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses). Therefore, Ms. Goertzen is not entitled to pre-judgment interest on the \$5,000 pain and suffering award, or on the reimbursement of her paid tribunal fees, discussed below.

FEES AND EXPENSES

40. 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. Goertzen was successful, I find that she is entitled to reimbursement of the \$175 she paid in tribunal fees. No dispute-related expenses were claimed.

ORDERS

41. Within 30 days of the date of this decision, I order the respondent, Taryn Kuemper-Sotvedt, to pay the applicant, Ariana Goertzen, a total of \$6,588.04, broken down as follows:

- a. \$6,410.05 in damages,
- b. \$2.99 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in tribunal fees.

42. Ms. Goertzen is also entitled to post-judgment interest, as applicable.

43. Ms. Goertzen's claims against ICBC in this dispute are dismissed.

44. 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