



# Civil Resolution Tribunal

Date Issued: January 12, 2021

File: VI-2020-005882

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Lam v. Schroeder*, 2021 BCCRT 34

BETWEEN:

JANICE LAM

**APPLICANT**

AND:

SHELDON SCHROEDER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

### INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on May 26, 2020 in Burnaby, British Columbia.
2. The applicant, Janice Lam, says she was struck by a truck driven by the respondent, Sheldon Schroeder, while she was attempting a right turn. Ms. Lam says Mr.

Schroeder aggressively drove straight through the intersection and collided with her vehicle. She says she suffered injuries as a result. Ms. Lam seeks a total of \$8,577 in damages, including \$5,627 for non-pecuniary (pain and suffering) damages, \$300 for her deductible, and \$2,650 for vehicle repairs.

3. Mr. Schroeder says he had the right of way and Ms. Lam improperly turned right in front of him, causing the accident. He denies any responsibility for the accident, and further says the damages claimed by Ms. Lam are too high.
4. Ms. Lam is self-represented. Mr. Schroeder is represented by an employee of his insurer, Insurance Corporation of British Columbia (ICBC).

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.

8. 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**

9. The issues in this dispute are:
  - a. Who is responsible for the May 26, 2020 accident, and
  - b. What damages, if any, is Ms. Lam entitled to?

## **BACKGROUND, EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, Ms. Lam, 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.

### ***The Accident***

11. On May 26, 2020, Ms. Lam was traveling westbound on Beresford Street in Burnaby, British Columbia, approaching a T-intersection with Royal Oak Avenue. At Royal Oak, westbound Beresford traffic must turn either left or right, and traffic is controlled by a stop sign. Ms. Lam says she intended to turn right onto northbound Royal Oak after having stopped at the stop sign.

12. At the same time, Mr. Schroeder was traveling northbound on Royal Oak approaching Beresford. There is one lane of travel for each northbound and southbound traffic on Royal Oak, and Royal Oak traffic at Beresford is controlled by a pedestrian-controlled traffic light.
13. Ms. Lam says that she made a full stop at the stop sign and as she saw sufficient room between vehicles to make a right hand turn, she started slowly moving into the northbound Royal Oak travel lane. Ms. Lam says Mr. Schroeder side swiped her when her vehicle was already in the Royal Oak travel lane.
14. In contrast, Mr. Schroeder says he was proceeding through the intersection at a slow pace due to traffic and construction ahead. It is undisputed there was a flag-person on Royal Oak just past the Beresford intersection who stopped northbound Royal Oak traffic while Mr. Schroeder was mid-way through the intersection. Mr. Schroeder says Ms. Lam attempted to turn right in front of him without stopping at the stop sign and collided with his truck. It is undisputed the pedestrian-controlled traffic light was flashing green for Royal Oak traffic at the time of the collision.
15. There was a witness to the accident, DH, as well as dash cam footage submitted by Mr. Schroeder.
16. DH provided an oral statement to ICBC on July 10, 2020. In the notes taken by an ICBC employee, DH is recorded as saying he was a cyclist at the pedestrian-controlled light at Beresford and Royal Oak, waiting to cross Royal Oak. DH stated there was construction going on, so the intersection was “messy”. DH said northbound Royal Oak traffic was congested and that Ms. Lam stopped at the stop sign on Beresford and then tried to “normally merge” with traffic on Royal Oak, and DH thought Ms. Lam had a “reasonable opportunity” to do so. DH stated Mr. Schroeder became impatient in traffic and tried to force his way through, catching the corner of Ms. Lam’s vehicle. DH stated the accident was “in slow motion” because the vehicles were barely moving at the time.

17. Mr. Schroeder's dash cam footage is also in evidence. In the video, congested traffic can be seen ahead of Mr. Schroeder's truck on Royal Oak. After Mr. Schroeder entered the Beresford intersection, traffic in front of him stalled. At this time, Ms. Lam approached the stop sign on Beresford. Although Ms. Lam and DH state Ms. Lam stopped at the stop sign, I disagree. The video footage shows Ms. Lam continued past the stop sign, but did stop her vehicle at the far edge of the crosswalk. In any event, I find Ms. Lam stopped her vehicle before entering the intersection, contrary to Mr. Schroeder's submission.
18. The vehicle in front of Mr. Schroeder on Royal Oak then began moving forward, while Mr. Schroeder's truck was still stopped, creating a gap in front of Mr. Schroeder. Ms. Lam attempted to turn into that gap. Mr. Schroeder began moving his truck forward, and Ms. Lam stopped her vehicle. Both vehicles again came to a stop. As the vehicle in front of Mr. Schroeder again began to proceed, Ms. Lam continued her attempted right turn, while Mr. Schroeder's truck remained stopped. After Ms. Lam started moving her vehicle, Mr. Schroeder progressed through the intersection, preventing Ms. Lam from continuing her turn. The front right corner of Mr. Schroeder's truck and the front left corner of Ms. Lam's vehicle ultimately collided at a very slow speed.
19. Section 175 of the *Motor Vehicle Act* (MVA) sets out the obligations of a driver who is about to enter a through highway. It states that a vehicle entering a through highway (here, Royal Oak Avenue), must stop in compliance with section 186, and must yield the right of way to traffic that has entered the intersection or is so close to the intersection that it constitutes an immediate hazard.
20. Section 186(a) of the MVA says that if there is a stop sign at an intersection, a driver must stop at the marked stop line, if any. As noted above, I find that Ms. Lam did not stop at the stop line, but did stop her vehicle before entering the intersection. This is a technical violation of section 186. More on this below.
21. It is undisputed that Mr. Schroeder was already in the middle of the intersection before Ms. Lam attempted to turn onto Royal Oak. This means that Mr. Schroeder was the dominant driver with the right of way, and Ms. Lam was the servient driver. According

to section 175 of the MVA, Ms. Lam had an obligation to yield to Mr. Schroeder, which I find she failed to do. Although she thought the gap between the two vehicles was enough space for her to turn into, it was still her obligation to yield to all traffic already in the intersection. She did not do so.

22. Although Ms. Lam did not stop at the appropriate stop line, I find this was not a proximate cause of the accident, meaning I find Ms. Lam's failure to stop at the stop line specifically was not ultimately a contributing cause to the accident. Rather, I find Ms. Lam's failure to yield the right of way to Mr. Schroeder's vehicle while it was already in the intersection was the cause of the accident. Therefore, I find nothing turns on Ms. Lam's technical breach of section 186 of the MVA, but I find Ms. Lam responsible for the May 26, 2020 accident due to her failure to comply with section 175.
23. However, the matter does not end there. In *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA), Justice Legg stated that when considering blameworthiness between drivers, to place any blame on the dominant driver, the servient driver must establish the dominant driver was aware or reasonably should have been aware of the servient driver's disregard of the law.
24. Here, I find Mr. Schroeder was aware of Ms. Lam's disregard of the law by failing to yield to his vehicle, and yet proceeded to try to prevent her from entering the intersection in front of him in any event. I find Mr. Schroeder had ample opportunity to see that Ms. Lam was not yielding the right of way, and had ample opportunity to avoid the collision. Therefore, I find Mr. Schroeder was contributorily negligent for the accident.
25. When apportioning fault between a dominant and servient driver, the British Columbia Court of Appeal in *Bedwell v. McGill*, 2008 BCCA 6, said there is often a greater responsibility on the servient driver to follow the rules of the road. This is because the dominant driver is generally entitled to assume that the servient driver will follow the rules of the road and yield the right of way. I find this principle applies in this dispute. While I find both Ms. Lam and Mr. Schroeder were negligent, Ms. Lam's failure to

yield the right of way was the initiating event that ended in the collision. I therefore find Ms. Lam is more blameworthy than Mr. Schroeder.

26. On a judgment basis, I find Ms. Lam 65% responsible, and Mr. Schroeder 35% responsible.

27. I turn then to Ms. Lam's claimed damages.

### ***Damages***

28. As noted above, Ms. Lam submits she suffered injuries and vehicle damage as a result of the accident. She seeks \$5,627 in non-pecuniary (pain and suffering) damages, \$300 for her deductible, and \$2,650 for vehicle damage.

### ***Non-pecuniary damages***

29. Ms. Lam claims she suffered a neck and shoulder injury as a result of the May 26, 2020 accident, as well as ongoing stress and anxiety. She says the stress and anxiety significantly impact her daily life.

30. Ms. Lam provided clinical records from her physiotherapist, massage therapist, and chiropractor, as well as two reports provided to ICBC by her family doctor, Dr. Michelle Lin. After the accident, Ms. Lam was diagnosed with a neck strain. It is undisputed that Ms. Lam attended at least 22 physiotherapy appointments, 9 massage appointments, and 15 chiropractic appointments after the accident to mid-October 2020. It is also undisputed that Ms. Lam continued to work full time, full duties, and there is no indication in the medical records that her physical injuries caused any functional limitation. In fact, in an August 13, 2020 report after a virtual appointment, Dr. Lin recorded that there was "no limit to her function from pain".

31. I also note that the clinical records indicate the accident occurred as Ms. Lam was on her way to a previously scheduled physiotherapy appointment. Ms. Lam did not explain why she was already attending physiotherapy. In the May 26, 2020 physiotherapy clinical record, the practitioner noted Ms. Lam had been suffering from left neck pain for 3 weeks, as well as left shoulder pain, which she was seeking

chiropractic and physiotherapy treatment for. Ms. Lam did not provide any pre-accident clinical records. On balance, I find Ms. Lam was already suffering from neck and shoulder pain at the time of the accident.

32. In any event, Dr. Lin's May 28, 2020 medical report to ICBC diagnosed Ms. Lam with a neck strain, despite no tenderness in her lumbar, thoracic or cervical spine, and otherwise full range of motion in her back and neurologically. Dr. Lin further noted Ms. Lam did not experience any previous pains in her upper back area, but did not address Ms. Lam's pre-accident physiotherapy and chiropractic treatment.
33. I also note Ms. Lam's physiotherapist diagnosed Ms. Lam with soft tissue injuries secondary to the accident. Although it is unclear whether this diagnosis was new as a result of the accident, or was an aggravation of Ms. Lam's pre-existing neck pain for which she was already seeking treatment.
34. Based on the above clinical records, and given the low speed minor impact, I find Ms. Lam suffered a mild neck strain or a mild aggravation of her pre-existing neck pain as a result of the May 26, 2020 accident, either of which substantially resolved by mid-October 2020, approximately 5 months later.
35. Although Ms. Lam claims she is facing "daily challenges of anxiety, depression, and excessive stress episodes" as a result of the accident, I find she has not proven her anxiety is related to the May 26, 2020 accident. In a June 3, 2020 consultation with a nurse practitioner, Ms. Lam requested medical cannabis for management of anxiety and insomnia that had been ongoing for 3 months (pre-dating the May 26, 2020 accident). Ms. Lam noted the causes of her anxiety were "work stress, home/personal life stress and unemployment", and further noted her anxiety symptoms were made worse by "family matters, work and being out in public". On balance, I find Ms. Lam's stress and anxiety symptoms pre-dated the accident, and there is insufficient evidence that those symptoms have worsened as a result of the accident. I find Ms. Lam has not proven she is entitled to any non-pecuniary damages as a result of her stress and anxiety.

36. As noted above, Ms. Lam claims \$5,627 for non-pecuniary damages, which is the applicable cap for a “minor injury” in an accident after April 1, 2020 as defined in the *Insurance (Vehicle) Act (IVA)* and *Minor Injury Regulation*. Previously, for accidents between April 1, 2019 and March 31, 2020, the applicable cap was \$5,500, which was increased to \$5,627 on April 1, 2020 further to section 6 of the *Minor Injury Regulation*. As this accident occurred on May 26, 2020, the \$5,627 cap applies. The parties did not expressly agree whether Ms. Lam’s injuries are “minor injuries” as defined by the IVA. However, given Ms. Lam’s claim falls within the applicable “minor injury cap”, I find that I do not need to determine whether the injuries are in fact “minor injuries”.
37. Mr. Schroeder does not dispute Ms. Lam’s physical injuries, but says that given their severity and duration, non-pecuniary damages should be assessed in the \$3,500 to \$4,000 range.
38. On a judgment basis, given the minor impact, the unknown extent of Ms. Lam’s pre-existing physical injuries, my finding that Ms. Lam’s stress and anxiety is unrelated to the accident, and the parties’ submissions on non-pecuniary damages, I find Ms. Lam is entitled to \$3,500 for her pain and suffering as a result of the May 26, 2020 accident. As I have found Ms. Lam 65% responsible for the accident, it follows any award for non-pecuniary damages must be reduced by 65%. Therefore, Ms. Lam is entitled to \$1,225 in non-pecuniary damages.
39. I note in her submissions Ms. Lam states she wants further counselling to help her “get back to normal”. To the extent Ms. Lam is requesting counselling as an accident benefit under Part 7 of the *Insurance (Vehicle) Regulation*, that is a claim against ICBC as her insurer, which is not before me in this dispute. To be clear, I make no findings about Ms. Lam’s future entitlement to accident benefits in this decision.

### ***Deductible***

40. Ms. Lam claims \$300 which she says is the deductible she is required to pay to have her vehicle repaired through ICBC. ICBC says that Ms. Lam has not yet had her

vehicle inspected by ICBC, nor has she paid any deductible. Given there is no evidence Ms. Lam has paid the \$300 deductible, I decline to order reimbursement of this amount. However, eventual payment of this deductible is discussed in further detail below.

### ***Vehicle damage***

41. Ms. Lam claims \$2,650 in damages related to her damaged vehicle. She submitted 3 different autobody shop quotes for the repairs to her vehicle. One for \$1,290.75, one for \$1,939.87, and one for \$2,335.91. Ms. Lam argues the quotes do not take into consideration the possibility of hidden damage. However, Ms. Lam did not provide any evidence of the existence of any potential hidden damage, such as a report from a qualified mechanic. Therefore, I do not accept her argument there may be additional hidden damage. Additionally, Ms. Lam did not provide any explanation for the variation between the 3 quotes, so I find the \$1,290.75 quote for repairs reasonable in the circumstances. As Ms. Lam is 65% responsible for the accident, her award for vehicle damage must be reduced by this amount. Therefore, I find Ms. Lam is entitled to \$451.76 for her vehicle repairs.
42. Ms. Lam would also be required to pay her portion of the \$300 deductible on her vehicle repairs. If I had found Ms. Lam 100% responsible for the accident, ICBC as her insurer would have paid for the repairs and Ms. Lam would have had to pay the \$300 deductible. Because she is 65% responsible and has not had the repairs done, she is entitled to 35% of the repair value (the amount Mr. Schroeder is responsible for) minus her 65% portion of the deductible she would have had to pay, which is \$195. This means I find Ms. Lam is entitled to \$256.76 in total for her vehicle damage (\$451.76 minus her \$195 deductible).
43. Ms. Lam also submitted an estimate for 3 days' car rental, totaling \$100.77. Ms. Lam did not provide any evidence or submissions as to why she would require a car rental for 3 days. I find Ms. Lam has not proven she is entitled to this amount and I dismiss this aspect of her claim.

**Special damages**

- 44. Ms. Lam also claims \$818 in special damages for mileage to her various medical appointments after the accident. Ms. Lam says this is based on 731 km and gas at \$119.9 per litre, but did not explain how she arrived at the \$818 figure.
- 45. Based on Ms. Lam’s address provided in her Dispute Notice, as well as the addresses and appointment dates provided in her clinical records, I find Ms. Lam incurred the following mileage for her medical appointments:

<i>Clinic</i>	<i>Number of visits</i>	<i>Return mileage per visit</i>
Dr. Michelle Lin	1	13 km
Total Therapy Inc.	22	14.2 km
Amora Massage Therapy	9	7 km
MacKenzie Chiropractic Associates	15	24 km

- 46. This amounts to 748.4 km. Using a rate of \$0.50 per km (as accepted in *Park v. Targonski*, 2015 BCSC 1531), this amounts to total special damages of \$374.20. After taking into account the liability apportionment, Ms. Lam would be entitled to \$130.97 in special damages for mileage to various medical appointments.
- 47. However, because Ms. Lam did not provide her pre-accident treatment records, it is unclear how many of the post-accident physiotherapy and chiropractic treatments would have occurred despite the accident, given Ms. Lam’s pre-existing neck and shoulder complaints. Therefore, on a judgment basis, I award Ms. Lam \$100 for special damages, reducing the mileage for physiotherapy and chiropractic treatments that would have occurred in any event.

## SUMMARY

48. In summary, Ms. Lam is awarded the following, taking into account the 65/35 apportionment of liability between the parties.

Non-pecuniary damages	\$1,225.00
Vehicle damage	\$256.76
Special damages	\$100.00
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Total	\$1,581.76

49. Pre-judgment interest and reimbursement for tribunal fees and dispute-related expenses are also payable to Ms. Lam, as discussed below.

## FEES, EXPENSES AND INTEREST

50. The *Court Order Interest Act* applies to Ms. Lam's vehicle damage and special damages claims. However, there is no indication Ms. Lam has yet paid to have her vehicle repaired, so I find she is not entitled to pre-judgment interest on the \$256.76 vehicle damage award. On a judgment basis, Ms. Lam is entitled to pre-judgment interest on the special damages award from October 8, 2020, the last appointment date in evidence. This amounts to \$0.12.

51. 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. Lam is not entitled to pre-judgment interest on the \$1,225 non-pecuniary damage award, or on the reimbursement of CRT fees or dispute-related expenses, discussed below.

52. 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. Lam was partially successful, I find that she is entitled to reimbursement of half of her paid tribunal fees, which equals \$87.50.

53. Ms. Lam also claims \$340 for the cost to obtain evidence. From the invoices in evidence, I find Ms. Lam has proven she paid \$269.25 for various medical records. I find the records were necessary for Ms. Lam's claim for non-pecuniary damages, and are reasonable. I find Ms. Lam is entitled to reimbursement of the proven \$269.25 in dispute-related expenses.

## **ORDERS**

54. Within 30 days of the date of this decision, I order the respondent, Sheldon Schroeder, to pay the applicant, Janice Lam, a total of \$1,938.63, broken down as follows:

- a. \$1,581.76 in damages,
- b. \$0.12 in pre-judgment interest under the *Court Order Interest Act*,
- c. \$87.50 in tribunal fees; and
- d. \$269.25 in dispute-relates expenses.

55. Ms. Lam is also entitled to post-judgment interest under the *Court Order Interest Act*.

56. 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.

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Andrea Ritchie, Vice Chair