



Civil Resolution Tribunal

Date Issued: January 20, 2021

File: VI-2020-004862

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Bullock v. Fossa*, 2021 BCCRT 71

BETWEEN:

MARY BULLOCK

APPLICANT

AND:

DINO WILLIAM FOSSA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on March 17, 2020 in Vancouver, British Columbia.
2. The applicant, Mary Bullock, who is also known as Mary Ellen Bullock, says she was struck from behind by a truck driven by the respondent, Dino William Fossa, when

Mr. Fossa was attempting to change lanes. Ms. Bullock claims that she was injured as a result. She seeks a total of \$5,977 in damages, including \$5,627 for non-pecuniary (pain and suffering) damages and \$350 for her deductible.

3. Mr. Fossa says Ms. Bullock pulled out from a parallel parking spot just as he was changing lanes. He says Ms. Bullock is fully responsible for the accident and asks that this dispute be dismissed.
4. Ms. Bullock is self-represented. Mr. Fossa 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 March 17, 2020 accident, and
 - b. What damages, if any, is Ms. Bullock entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Ms. Bullock, 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?

11. It is undisputed that the accident happened in the early afternoon of March 17, 2020, while both parties were westbound on East Hastings Street between Slocan Street and Penticton Street. At this area of East Hastings Street, there are three lanes in each direction for westbound and eastbound traffic. Parking is permitted in the right curb lane for westbound traffic after 10 a.m., leaving the middle lane and left inside lane for through traffic.

12. The parties each have different versions of how the accident happened. Ms. Bullock says that she was parallel parked facing westbound on East Hastings Street, just past Slocan Street. She says she put her left turn signal on, looked to confirm there was no traffic approaching from behind her in either lane of travel, and safely pulled out into the middle lane, westbound on East Hastings Street. Ms. Bullock says she was fully established in the middle lane and had travelled approximately 250 metres toward Penticton Street before she was hit. Ms. Bullock says she was slowing for a red light at Penticton Street when Mr. Fossa changed lanes from the left inside lane, to the middle lane where Ms. Bullock was driving. Ms. Bullock says she did not see Mr. Fossa's vehicle until she was hit. She says Mr. Fossa immediately jumped out of his truck and admitted he did not see her and that the accident was his fault.
13. Mr. Fossa says that he turned left from a side street onto westbound East Hastings Street and then immediately changed lanes when, at the same time, Ms. Bullock pulled out from her parallel parking spot and the right front corner of his truck struck the rear left bumper and rear quarter panel of Ms. Bullock's vehicle. I infer that the side street Mr. Fossa turned left from was Slocan Street.
14. It is undisputed that neither party took photographs of the accident scene, there was no dash camera footage of the accident, and there were no independent witnesses.
15. The relevant sections of the *Motor Vehicle Act* (MVA) are sections 151(1) and 169. Section 151(1) 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. Section 169 of the MVA says that a person must not move a vehicle that is stopped, standing or parked unless the movement can be made with reasonable safety and the driver first gives the appropriate signal.
16. For the reasons that follow, I find Ms. Bullock's version of the accident more persuasive and I find Mr. Fossa is 100% at fault for the accident.
17. First, I find there is an inconsistency in Mr. Fossa's statements that he failed to explain in his submissions. Mr. Fossa filed ICBC's internal notes of his telephone statements

about the accident. According to these notes, Mr. Fossa initially reported the accident to ICBC on the day it happened. The notes record that Mr. Fossa stated he made a left turn to head westbound on East Hastings Street. He stated he travelled for about 15 seconds in the left inside lane, then changed lanes into the middle lane and, at the same time, Ms. Bullock pulled out of her spot and the collision occurred. Mr. Fossa also reported that his truck had a blind spot, so he was not able to see Ms. Bullock pull out.

18. On June 4, 2020, Mr. Fossa made another telephone statement to ICBC. The notes record that Mr. Fossa stated he pulled out of a side street onto East Hastings Street and then almost immediately changed lanes from the left inside lane to the middle lane. He also told ICBC that he did not think Ms. Bullock did anything wrong, he believed the accident was his fault, and he accepted 100% of the blame.
19. Mr. Fossa did not explain why he initially reported that he travelled for 15 seconds in the left inside lane before changing lanes, but later reported he almost immediately changed lanes after turning left. Given his initial report was made on the day of the accident, I find it is more likely than not that the first report is more accurate on this point than his later statement. Therefore, I find that Mr. Fossa did not immediately change lanes after turning left onto East Hastings Street, and the accident must have happened further down the block towards Penticton Street. This is consistent with Ms. Bullock's submissions about where the accident occurred.
20. Next, while Mr. Fossa submits that Ms. Bullock pulled out of her parking spot as he was changing lanes, I note that he admits his truck has a blind spot and he did not see Ms. Bullock before the impact. It is undisputed that Mr. Fossa was driving a commercial work truck at the time of the accident, though he did not file any photographs of the truck in evidence. Nevertheless, I find his evidence about a blind spot casts some doubt on the reliability of his evidence about where Ms. Bullock was before the impact. I find it is equally possible that Mr. Fossa had simply not noticed Ms. Bullock travelling in the middle lane as he travelled down East Hastings Street in

the left inside lane, and did not realize Ms. Bullock had moved into his blind spot when he decided to make his lane change.

21. Further, the photographs of the damage to Ms. Bullock's vehicle show it was hit on the right rear quarter panel. As noted, Mr. Fossa did not submit any photographs of his truck, but it is undisputed that his left front corner hit Ms. Bullock's vehicle. I find it is more likely than not that Ms. Bullock was fully established in the middle lane before she was struck, for her rear quarter panel to be exposed to Mr. Fossa's left front corner as he changed lanes.
22. In order to accept Mr. Fossa's version of the accident, I find I would have to reject Ms. Bullock's evidence that she checked for approaching traffic before exiting her parking spot, as Mr. Fossa would have been there to be seen. However, in contrast to Mr. Fossa's inconsistent and vague evidence about the accident, I find that Ms. Bullock's statements to ICBC and her submissions in this dispute have been more detailed and consistent. While Ms. Bullock appears to have used "feet" and "metres" interchangeably in her submissions to describe the distance between Slocan Street and Penticton Street and how far she had travelled, I find nothing turns on it, as the precise distance measurements are not relevant to my decision.
23. Overall, I find Ms. Bullock's evidence credible that she put her left turn signal on and checked for traffic before pulling into the middle lane, but Mr. Fossa's truck was not approaching in either westbound lane before she exited her parking spot. Therefore, I find Ms. Bullock safely moved her parked vehicle and she did not breach section 169 of the MVA.
24. Finally, I note that Mr. Fossa acknowledged responsibility for the accident both to Ms. Bullock at the time of the accident and in his June 4, 2020 telephone statement to ICBC. I find his admission is consistent with my conclusions about how the accident happened.

25. On the whole of the evidence, I find it more likely than not that Mr. Fossa was unaware that Ms. Bullock was driving just ahead of him in the middle lane and, particularly given his truck had a blind spot, Mr. Fossa was obligated to ensure that it was safe for him to change lanes, but failed to do so. I find Mr. Fossa breached section 151(1) of the MVA, and that this breach was the sole cause of the accident. I find Mr. Fossa is 100% at fault.

26. I turn now to Ms. Bullock's claimed damages.

Damages

27. As noted above, Ms. Bullock submits she suffered injuries and vehicle damage as a result of the accident. She seeks \$5,627 in non-pecuniary (pain and suffering) damages and \$350 for her deductible.

28. Ms. Bullock claims her seatbelt tightened across her chest and pulled on her neck and shoulder during the impact, causing whiplash and bruising. She says her doctor advised her she will need massage and physiotherapy to treat soft tissue damage to these areas.

29. The June 18, 2020 Physiotherapy Initial Report in evidence notes Ms. Bullock subjectively reported constant pain in her neck and across the top of her left shoulder, which was aggravated by lifting. It also noted Ms. Bullock reported getting headaches when looking down or lying on her back. Ms. Bullock also reported low back pain that radiated into both buttocks and down the back of her legs, which was aggravated by prolonged sitting, bending, or lifting. The physiotherapist diagnosed her with Grade II soft tissue injuries and a soft tissue strain to her back.

30. Ms. Bullock did not submit any further evidence of her injuries, such as clinical records from her doctor or the extent of treatment she has received, and her submissions about ongoing symptoms were limited.

31. As noted above, Ms. Bullock 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*. 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*. However, as this accident occurred on March 17, 2020, the \$5,500 cap applies. Ms. Bullock expressly admitted that her injury is a “minor injury”, and I infer that she intended to claim the applicable maximum “minor injury cap”. Mr. Fossa also acknowledges that Ms. Bullock is claiming the maximum “minor injury cap” for non-pecuniary damages. Even though Ms. Bullock claims the increased cap for non-pecuniary damages, I find both parties understood that Ms. Bullock is claiming the applicable “minor injury cap”, which is \$5,500. Therefore, I find that I do not need to determine whether Ms. Bullock’s injuries are in fact “minor injuries”.
32. Mr. Fossa does not dispute Ms. Bullock’s physical injuries but says they do not appear to have impacted her function to any great degree, given the physiotherapy report says she returned to her activities of daily living within about 3 months of the accident. He says Ms. Bullock’s non-pecuniary damages should be assessed in the range of \$2,500 to \$3,500.
33. I note that Ms. Bullock is currently 67 years old and retired. The evidence shows that the damage to her vehicle required repairs totaling over \$6,000, which suggests it was not a minor impact. While the physiotherapy report noted that Ms. Bullock had returned to her activities of daily living, it also stated she returned to those activities “with symptoms”, which I infer means she had not achieved full recovery from her injuries. On a judgment basis, I find an award of \$4,500 is appropriate to compensate Ms. Bullock for her pain and suffering as a result of the March 17, 2020 accident.
34. To the extent that Ms. Bullock says she requires further treatment for her injuries, I find any claim for future accident benefits under Part 7 of the *Insurance (Vehicle) Regulation*, 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. Bullock's future entitlement to accident benefits in this decision.

35. With respect to Ms. Bullock's \$350 claim for her deductible, the evidence suggests that Ms. Bullock's deductible was waived, at least initially when her vehicle damage was being assessed. Ms. Bullock did not provide any evidence that she ultimately paid a \$350 deductible. Therefore, I decline to order reimbursement of this amount.

36. 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. Bullock is not entitled to pre-judgment interest on the \$4,500 pain and suffering award, or on the reimbursement of her paid CRT fees, discussed below.

FEES AND EXPENSES

37. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. As Ms. Bullock was substantially successful, I find she is entitled to reimbursement of the \$175 she paid in CRT fees. No dispute-related expenses were claimed.

ORDERS

38. Within 30 days of the date of this decision, I order the respondent, Dino William Fossa, to pay the applicant, Mary Bullock, a total of \$4,675, broken down as follows:

- a. \$4,500 in damages, and
- b. \$175 in CRT fees.

39. Ms. Bullock is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.

40. 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.

Kristin Gardner, Tribunal Member