



Civil Resolution Tribunal

Date Issued: February 26, 2021

File: VI-2020-005297

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Tilston v. Hadden*, 2021 BCCRT 227

BETWEEN:

THEA TILSTON

APPLICANT

AND:

JAMES DOUGLAS HADDEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on December 12, 2019, in Vancouver. The applicant, Thea Tilston, and the respondent, James Douglas Hadden, were both travelling westbound on West 2nd Avenue. They collided after they had both changed out of the left lane to get around another vehicle, which was turning left onto Manitoba Street.

2. Ms. Tilston says that Mr. Hadden is fully responsible for the accident. Mr. Hadden initially said in his Dispute Response that Ms. Tilston was either fully or partially responsible for the accident. In his final submissions, he says that the parties are equally responsible.
3. The parties agree that Ms. Tilston's injuries were "minor injuries" under section 101 of the *Insurance (Vehicle) Act*. The parties also agree that Ms. Tilston's non-pecuniary (pain and suffering) damages are \$5,500, subject to my liability determination. This is the maximum amount she can receive for a minor injury under section 6 of the *Minor Injury Regulation*. She does not claim any other damages.
4. Ms. Tilston is self-represented. Mr. Hadden is represented by an employee of his insurer, the 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)(c) of the CRTA and section 7 of the *Accident Claims Regulation* 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 the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. The credibility of 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. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

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.

ISSUE

9. The issue in this dispute is who is responsible for the December 12, 2019 accident.

BACKGROUND AND EVIDENCE

10. In a civil claim such as this, Ms. Tilston as the applicant must prove her case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The following facts are not disputed. The accident occurred mid-afternoon on December 12, 2019. Both parties were travelling west in the left lane of West 2nd Avenue in Vancouver, approaching Manitoba Street. At this point, West 2nd Avenue has 2 travelling lanes and a third lane for parallel street parking. Ms. Tilston was in front of Mr. Hadden. The parties dispute how many cars back Mr. Hadden was, but I find that this detail does not affect the outcome of this dispute.

12. A vehicle in front of Ms. Tilston was turning left onto Manitoba Street, slowing traffic in the left lane. Both parties changed into the right lane and collided shortly afterwards.
13. The parties pulled over to discuss the accident. There was also an independent witness, MT, who stopped to talk to the parties about what MT saw.

Ms. Tilston's Account

14. Ms. Tilston says that when the vehicle in front of her began slowing to turn left, she decided to change into the right lane. She says that she signalled and shoulder checked. She saw that the right lane was clear, so she changed lanes. She says that Mr. Hadden was right behind her. She says that he also changed into the right lane, but then tried to pass her on the right through the far right parking lane. She says that he cut back into her lane from the parking lane and struck her car at the right front corner. She says that she was established in the right lane when the accident happened.

Mr. Hadden's Account

15. Mr. Hadden says that he was 3 vehicles behind Ms. Tilston in the left lane. He says that when a vehicle several vehicles ahead of him stopped to turn left, he changed into the right lane. He says that he then began accelerating. He says that he was travelling straight ahead in the right lane when Ms. Tilston suddenly pulled out of the left lane, directly into the side of his vehicle. He says that her right front bumper struck his left driver's door.
16. Mr. Hadden says that when the parties were stopped after the collision, MT accused Mr. Hadden of cutting MT off several blocks earlier. In his statement to ICBC, Mr. Hadden acknowledged that he had changed lanes in front of MT several blocks earlier, but said that he shoulder checked. He denied almost hitting MT. He says that MT was "hostile" towards him and sided with Ms. Tilston.

MT's Account

17. MT gave ICBC a written statement around December 16, 2019, along with a diagram. He also gave phone statements to ICBC on January 21, 2020, and September 23, 2020.
18. MT said that several blocks before the accident, Mr. Hadden almost hit them. MT said they were wary of Mr. Hadden after this near-accident.
19. MT said that they were travelling in the right lane behind both parties before the accident. MT said that when traffic in the left lane began to slow down, both parties moved into the right lane at the same time. MT said that they both used their turn signals before changing lanes. MT said that after changing into the right lane, Mr. Hadden sped up and crossed into the parking lane to pass Ms. Tilston. MT said that Mr. Hadden then quickly tried to move back into the right lane in front of Ms. Tilston and struck her car.
20. MT also spoke to an adjuster on September 23, 2020. According to ICBC's notes of this conversation, MT clarified that Ms. Tilston was about 90% into the right lane and Mr. Hadden was about 90% in the parking lane when Mr. Hadden tried to cut back into the right lane.

ANALYSIS

21. Ms. Tilston's and MT's accounts of what happened are not identical, but they are similar. Mr. Hadden's account is quite different. So, there are essentially 2 accounts of what happened leading up to the accident.
22. There are photos of the damage to both vehicles in evidence. However, I find that the damage to both vehicles is consistent with both accounts. With that, I find that this dispute turns in large part on the credibility and reliability of the parties and MT.
23. In a statement to ICBC, Mr. Hadden said that he believes that MT is biased against him because of the earlier near-accident. While his submissions were not explicit on

this point, I take Mr. Hadden to be suggesting that I should put less weight on MT's evidence because MT is not impartial and therefore not credible.

24. I am not persuaded that that MT was biased against Mr. Hadden or that MT gave false evidence to ICBC to be vindictive. I find that MT and Ms. Tilston's accounts are generally similar, but, as noted above, they are not exactly the same. This suggests that MT did not tailor their evidence to help Ms. Tilston. I note that there is no evidence that Ms. Tilston and MT discussed the specifics of how the accident happened, either at the scene or afterwards.
25. There is also no evidence that MT has any interest in this dispute's outcome. So, I find that there is no persuasive reason to doubt MT's credibility.
26. I also find that MT's evidence is reliable. Because MT was travelling close behind both parties in traffic, they had every reason to be paying close attention to what the parties did. This is especially so since MT and Mr. Hadden had some sort of near miss shortly before the accident. Also, MT gave his first statement and diagram to ICBC 4 days after the accident, when their memory would have been fresh. MT's statements, including the diagram, are detailed and specific.
27. In conclusion, I find that MT's evidence is credible and reliable. I put considerable weight on it. There is nothing in Ms. Tilston's evidence or Mr. Hadden's evidence that cause me to question their reliability or credibility. Their evidence is both internally consistent, plausible, and consistent with the vehicle damage. I find that MT's evidence breaks this evidentiary tie about how the accident happened. I find that the accident occurred as Ms. Tilston and MT describe it.
28. Somewhat inconsistently, Mr. Hadden makes an argument that is based on MT's statement to ICBC. Mr. Hadden argues that Ms. Tilston was partially responsible for the accident because she was only 90% established in the right lane, not fully established. Mr. Hadden does not fully explain why this small distinction matters. He refers to section 151 of the *Motor Vehicle Act* (MVA) in his submissions, which prohibits changing lanes when it is unsafe to do so. Implicitly, he suggests that if Ms.

Tilston was not fully established in the right lane when the parties collided, it shows that she should not have attempted to change lanes in the first place. I disagree.

29. I find that even if Ms. Tilston was not fully established in the right lane when Mr. Hadden tried to go around her in the parking lane, this does not necessarily mean that she changed lanes when it was unsafe to do so. I rely on MT's evidence that the parties started their lane changes at the same time. This supports Ms. Tilston's evidence that the right lane was clear when she started her lane change.
30. Ms. Tilston says that Mr. Hadden breached section 158 of the MVA, which prohibits drivers from passing vehicles on the right except in specific situations, which I find are not present here. I agree with Ms. Tilston that Mr. Hadden breached section 158 by attempting to pass her on the right using the parking lane. I also find that Mr. Hadden breached section 151 of the MVA by attempting to change lanes from the parking lane to the right lane when it was not safe to do so
31. While breaches of the MVA are not necessarily determinative of negligence, I find that Mr. Hadden's attempt to pass Ms. Tilston using the parking lane fell below the standard of care of a reasonably prudent driver in the circumstances. I find that there is no persuasive evidence to support Mr. Hadden's argument that Ms. Tilston contributed to the accident. Therefore, I find that Mr. Hadden was entirely at fault for the accident.
32. I order Mr. Hadden to pay Ms. Tilston the agreed-upon \$5,500 for pain and suffering damages.

FEES, EXPENSES AND INTEREST

33. The *Court Order Interest Act* (COIA) applies to the CRT. However, under section 2, pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury. So, I find that Ms. Tilston is not entitled to pre-judgment interest.
34. Under section 49 of the CRTA, and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. I order Mr.

Hadden to reimburse her \$175 in CRT fees. Ms. Tilston did not claim any dispute-related expenses. I dismiss Mr. Hadden's claim for reimbursement of his CRT fees.

ORDERS

35. Within 30 days of the date of this decision, I order Mr. Hadden to pay Ms. Tilston a total of \$5,675, broken down as follows:

- a. \$5,500 in damages, and
- b. \$175 in CRT fees.

36. Ms. Tilston is also entitled to post-judgment interest under the COIA.

37. 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.

Eric Regehr, Tribunal Member