



# Civil Resolution Tribunal

Date Issued: July 5, 2021

File: VI-2020-003685

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Cai v. Sall*, 2021 BCCRT 732

**B E T W E E N :**

MICHELLE CAI

**APPLICANT**

**A N D :**

KULWINDER SALL

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Eric Regehr

## **INTRODUCTION**

1. This dispute is about a motor vehicle accident that took place on December 23, 2019, in Vancouver, BC. The applicant, Michelle Cai, says that the respondent, Kulwinder Sall, made a sudden U-turn in front of her SUV, causing her to run into the side of his

taxi van. Ms. Cai says that the accident was entirely Mr. Sall's fault. She claims \$100 in damages for injuries she says she suffered and \$12,246.62 in vehicle damage.

2. Mr. Sall denies making a U-turn. He says that he was turning left off a side street when Ms. Cai ran a red light and T-boned him. He also says that Ms. Cai's \$100 claim is for physiotherapy treatment, which is an accident benefit that she should claim from the Insurance Corporation of British Columbia (ICBC) under Part 7 of the *Insurance Vehicle Regulation (IVR)*. He argues that she should not claim this treatment cost from him. He also says that Ms. Cai does not own the SUV and so is not entitled to compensation for the damage to it. Mr. Sall asks me to dismiss Ms. Cai's claims.
3. The applicant is represented by her son, who is not a lawyer. The respondent is represented by an ICBC employee. ICBC is not a party to this dispute.

## **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 liability and damages claims, up to \$50,000.
5. On March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect. It also ordered that section 16.1 of the CRTA was unconstitutional to the extent it applied to these provisions. The BC Supreme Court's decision was appealed. The BC Court of Appeal granted a partial stay of the BC Supreme Court's order on April 8, 2021. This means that parts of the BC Supreme Court's order are suspended until the BC Court of Appeal makes its final decision. The partial stay allows the CRT to resolve claims under sections 133(1)(b) and (c) of the CRTA. It also allows a court to resolve these types of claims without needing to consider whether the claim should be heard by the CRT instead.

6. The CRT provided Ms. Cai with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Ms. Cai whether she wanted to continue with the CRT dispute or file a court proceeding instead. She chose to continue at the CRT.
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 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. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. 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. 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. I find that an oral hearing is not necessary in the interests of justice.
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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Who was responsible for the accident?
  - b. If Mr. Sall was fully or partially responsible, what are Ms. Cai's damages?

## **BACKGROUND**

11. In a civil claim such as this, Ms. Cai as the applicant must prove her claims 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.
12. The accident occurred at around 4:45am on December 23, 2019, at the intersection of Victoria Drive and Victoria Diversion. Victoria Drive is a north-south street in Vancouver. As Victoria Drive goes north from Kingsway, it veers slightly northwest, becoming Victoria Diversion. There is an intersection with traffic lights where Victoria Drive becomes Victoria Diversion. At this intersection, northbound traffic can turn right to remain on Victoria Drive or continue north onto Victoria Diversion. Traffic cannot turn left. As northbound traffic approaches the intersection, there are 2 lanes each direction, with street parking allowed in the curb lanes in off-peak hours.
13. It is undisputed that Ms. Cai was travelling north on Victoria Drive and intended to continue straight through the intersection onto Victoria Diversion. It is also undisputed that the front right corner of Ms. Cai's SUV collided with the driver's door of Mr. Sall's taxi van. This is confirmed by photos of the damage to both vehicles. The parties dispute which direction Mr. Sall was travelling, as discussed in more detail below.
14. There are no independent witnesses to the accident and no video footage of the accident, such as dashcam footage.

## EVIDENCE AND ANALYSIS

### *Liability*

15. I will start with Ms. Cai's account of the accident. She says that she was driving behind Mr. Sall north on Victoria Drive. She says that they were both in the middle lane because there were parked cars in the curb lane. She says that as they approached the intersection, Mr. Sall signalled right as if he planned to turn right to continue on Victoria Drive. She says that he began what appeared to be a right turn by angling into the curb lane. Then, she says that instead of continuing right on Victoria Drive, he unexpectedly swung around and attempted a U-turn directly in front of her. She says that she had no time to stop and ran directly into the side of the van.
16. She provided ICBC with an undated diagram, which showed Mr. Sall signalling and beginning to turn right before veering left to make a U-turn. The diagram depicts how Ms. Cai says Mr. Sall travelled but does not depict the impact itself.
17. Mr. Sall denies that he was travelling north on Victoria Drive before the accident. He says that he was travelling southwest on Victoria Drive, intending to turn left at the intersection and proceed south on Victoria Drive. He says he had a green light. He said he had been on Victoria Drive for half a block and was going to pick up a passenger. I note that he did not provide any documentary evidence to support where he had picked up and dropped off passengers before the accident. He says that as he was turning, Ms. Cai's SUV T-boned him from the south. He says that he did not see Ms. Cai's SUV until it hit him. He says that she ran a red light.
18. Mr. Sall filled out and signed an ICBC Taxi New Claim Report the day of the accident, which included a diagram. It shows his van in the middle of the northbound lane on Victoria Drive angled slightly towards the south, beginning a left hand turn. It shows Ms. Cai's SUV striking him head on, with the front left corner of the SUV contacting the middle of the van's driver's side.
19. As mentioned above, this dispute turns on whose account of the accident is more credible. A key aspect of assessing credibility is comparing each party's evidence to

objective evidence, such as physical evidence. Ms. Cai makes several arguments about Mr. Sall's credibility, but I find that the question of liability in this dispute can be determined by comparing the parties' accounts to the vehicle damage.

20. As mentioned above, the damage to Mr. Sall's van was mostly to the driver's side door. I find that this damage is consistent with both accounts because the point of impact to Mr. Sall's van is the same in both.
21. The damage to Ms. Cai's SUV was the front right area of the bumper, indicating that the primary point of contact was the SUV's front right corner. I find that this damage is consistent with Ms. Cai's account but not Mr. Sall's. If Ms. Cai was travelling straight up Victoria Drive while Mr. Sall attempted a U-turn in front of her, as Ms. Cai alleges, I find that the first portion of the U-turn would expose the side of Mr. Sall's van to the front *right* corner of Ms. Cai's SUV. In contrast, if Mr. Sall was turning left in front of Ms. Cai, as Mr. Sall alleges, I find that the turn would expose the side of Mr. Sall's van to the front *left* corner of Ms. Cai's SUV.
22. While I recognize that it was a somewhat rough sketch, it is noteworthy that Mr. Sall's own diagram of the accident shows the front left corner of Ms. Cai's SUV impacting his van.
23. On the basis of the vehicle damage evidence, I reject Mr. Sall's evidence about how the accident happened. Mr. Sall did not make any arguments about Ms. Cai's credibility, and I find no reason to doubt her evidence. So, I accept Ms. Cai's evidence about how the accident happened.
24. Section 168(b)(iv) of the *Motor Vehicle Act* prohibits making a U-turn at an intersection with a traffic control device. As mentioned above, the intersection of Victoria Drive and Victoria Diversion has a traffic light, so Mr. Sall breached section 168(b)(iv) by attempting a U-turn. I also find that Mr. Sall's attempt to make a U-turn when Ms. Cai was behind him fell below the standard of care of a reasonable driver in the circumstances. I find that Mr. Sall was negligent.

25. As for Ms. Cai, I find that there is no evidence that she was following Mr. Sall too closely or was otherwise driving unsafely before the accident. Given that Mr. Sall signaled right and appeared to be turning right before beginning his U-turn, I find that she did nothing wrong in proceeding straight through the intersection. I find that there was nothing she reasonably could have done to avoid the accident.
26. I therefore find Mr. Sall 100% liable for the accident.

### ***Damages for Injuries***

27. Before turning to the details of Ms. Cai's \$100 claim, I find it necessary to determine the nature of that claim. This is because the materials before me are inconsistent about whether she wants \$100 for physiotherapy treatment or \$100 in non-pecuniary damages for pain and suffering.
28. In the Dispute Notice, Ms. Cai described the nature of her injuries and said, among other things, that she should get \$100 in damages "for physiotherapy". Based on his submissions, it is clear that Mr. Sall considers her claim to be for the cost of physiotherapy treatment, not pain and suffering. This is because he refers to Part 7 of the IVR, which sets out an ICBC insured's entitlement to accident benefits like physiotherapy.
29. On the other hand, in the agreed statement of facts, the parties agreed that Ms. Cai's injuries are "minor injuries". This is a reference to section 103 of the *Insurance Vehicle Act*, which limits non-pecuniary damages for minor injuries. I find that there would be no reason for the parties to agree that Ms. Cai's injuries were minor injuries unless they both understood the claim to be for non-pecuniary damages. This is because it is irrelevant to Ms. Cai's entitlement to accident benefits under Part 7 of the IVR.
30. On balance, I find that in substance Ms. Cai's claim is for pain and suffering damages. I say this primarily because the parties agreed that her injuries were minor. Also, in her submissions, Ms. Cai says that her arm was sore long enough that she "wanted to go see physiotherapy". This suggests that she never got physiotherapy treatment and does not need it now. I therefore find that she included the reference to

physiotherapy to illustrate that she was hurt and not to indicate that she wanted Mr. Sall to reimburse her for the cost of physiotherapy.

31. Turning to the claim itself, on January 6, 2020, Ms. Cai reported to ICBC that she had injured her knees and arms. She said that her right knee was no longer sore, but both arms and left knee both still hurt. She said that the pain woke her up from sleep. She said she had gone to a walk-in clinic, although there are no medical records before me.
32. In this dispute, she says that she never missed any work, but her arm was sore enough that it affected her work as well as her ability to sleep. Ms. Cai does not say when her injuries resolved, but the description of her injuries in the Dispute Notice are in the past tense, which suggests that they had resolved by the time she filed it in May 2020.
33. Ms. Cai's claim for \$100 is very modest. As mentioned above, the parties agreed that she her injuries were "minor injuries", which means that she was undisputedly injured to some extent. So, even without much detail about her injuries, I find that she has proven that she is entitled to \$100 for pain and suffering, and I order Mr. Sall to pay this amount.

### ***Vehicle Damage***

34. The SUV was a total loss, meaning it could not be economically repaired. Ms. Cai says that she had to buy a new vehicle, which cost \$21,498.40, but ICBC only paid \$9,251.78. She claims the \$12,246.62 difference.
35. Mr. Sall argues that Ms. Cai is not the SUV's owner, so she has no standing, or legal authority, to make a vehicle damage claim. In the alternative, Mr. Sall argues that if Ms. Cai has standing, sections 176 and 177 of the IVR say that an arbitrator must decide how much she is entitled to for the SUV, so the CRT does not have jurisdiction. In any event, Mr. Sall says that the SUV's owner is only entitled to the actual cash value of the SUV, not its replacement cost.



36. I find that I only need to address the first argument. According to a vehicle valuation report in evidence, Ms. Cai's husband owns the SUV. Ms. Cai does not dispute this, and her husband is not a party to this dispute. I agree with Mr. Sall that Ms. Cai cannot make a claim on her husband's behalf. Also, because she is not an owner of the SUV, she did not suffer any loss when it was damaged. I find that Ms. Cai has no standing to make a vehicle damage claim for the SUV. On that basis, I dismiss this claim.

## **FEES, EXPENSES AND INTEREST**

37. Further to section 2 of the *Court Order Interest Act* (COIA), pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury. So, I find that Ms. Cai is not entitled to interest on her damages award.

38. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Ms. Cai was partially successful, so I find she is entitled to reimbursement of half of her \$175 in CRT fees, which is \$87.50. Mr. Sall was also partially successful, so I find he is entitled to reimbursement of half of his \$25 in CRT fees, which is \$12.50. The net result is that Mr. Sall must reimburse Ms. Cai \$75 in CRT fees. Neither party claimed any dispute-related expenses.

## **ORDERS**

39. Within 30 days of the date of this decision, I order Mr. Sall to pay Ms. Cai a total of \$175, broken down as follows:

- a. \$100 in non-pecuniary damages, and
- b. \$75 in CRT fees.

40. Ms. Cai is entitled to post-judgment interest under the COIA.

41. I dismiss Ms. Cai's claim for vehicle damage.

42. 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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Eric Regehr, Tribunal Member