



# Civil Resolution Tribunal

Date Issued: July 13, 2021

File: VI-2020-007636

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Pedersen v. Makkar*, 2021 BCCRT 767

BETWEEN:

CHRISTIAN PEDERSEN

**APPLICANT**

AND:

GURSIMRAN MAKKAR

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on April 6, 2020, in Surrey BC. The applicant, Christian Pedersen, and the respondent, Gursimran Makkar, collided in an intersection. The parties both say that the other ran a red light.

The parties' insurer, the Insurance Corporation of British Columbia (ICBC), internally found each party 50% responsible because it could not determine who was at fault. ICBC is not a party to this dispute. Its determination is not binding on me.

2. Mr. Pedersen was undisputedly injured in the accident. He claims \$5,627 in non-pecuniary (pain and suffering) damages and \$6,000 in accelerated vehicle depreciation. He also asks for an order reversing the increase in his ICBC insurance premiums after the accident.
3. Mr. Makkar says that there is no independent or objective evidence to confirm either party's account. He says that Mr. Pedersen has therefore failed to prove that Mr. Makkar was negligent. He asks me to dismiss Mr. Pedersen's claims.
4. Mr. Pedersen is self-represented. Mr. Makkar is represented by an ICBC employee.

## **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. 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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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.

7. The CRT provided Mr. Pedersen with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked him whether he wanted to continue with the CRT dispute or file a court proceeding instead. He chose to continue at the CRT.
8. 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.
9. 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.
10. 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**

11. The parties agree that Mr. Pedersen's injuries are "minor injuries" under section 101 of the *Insurance (Vehicle Act)*. The parties also agree that Mr. Pedersen is entitled to non-pecuniary damages of \$5,627, subject to my liability assessment.

12. Mr. Pedersen initially also claimed \$110 in special damages, which is the difference between the amount he paid for chiropractic treatment and the amount that ICBC reimbursed him under his own accident benefits. The parties resolved that claim during the CRT's facilitation process, so I find that it is not before me.
13. The remaining issues in this dispute are:
  - a. Who was responsible for the accident?
  - b. What are Mr. Pedersen's damages?

## **BACKGROUND**

14. In a civil claim such as this, Mr. Pedersen as the applicant must prove his 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.
15. The following facts are undisputed. The accident occurred on April 6, 2020, at around 8:00 am, at the lighted intersection of 72<sup>nd</sup> Avenue and 122<sup>nd</sup> Street in Surrey BC. It was a sunny morning. 122<sup>nd</sup> Street has a single lane and a left-hand turn lane at the intersection. 72<sup>nd</sup> Avenue has 2 lanes and a left-hand turn lane at the intersection. Mr. Pedersen was driving north on 122<sup>nd</sup> Street in a large pickup truck. Mr. Makkar was driving west in the right lane of 72<sup>nd</sup> Avenue in a sedan.
16. The front of Mr. Makkar's car struck the front right corner of Mr. Pedersen's truck when the vehicles collided in the intersection. There were no independent witnesses to the accident. Neither party had a dashcam and the traffic camera at the intersection was not working, so there is also no video footage of the accident.
17. Both parties say that they had a green light and that the other party ran a red light. With that, I find that the sole issue on liability is who had a green light.

## ***Liability Analysis***

18. Mr. Pedersen says that he was driving north on 122<sup>nd</sup> Street. He says that the light was red when he approached 72<sup>nd</sup> Avenue, so he stopped. He said that as he waited, southbound traffic on 122<sup>nd</sup> Street got an advanced green. He says that he started forward when his light turned green and got hit as he made his way through the intersection.
19. In contrast, Mr. Makkar says that he was driving west on 72<sup>nd</sup> Avenue at about 60 km/h as he approached 112<sup>th</sup> Street. He says that the light was green, so he continued into the intersection with 122<sup>nd</sup> Street. He says that he did not hear a honk or see Mr. Pedersen's truck until they collided.
20. ICBC recovered the black boxes from both vehicles and had a forensic consultant download and report on their contents. According to an internal ICBC note, the black box in Mr. Makkar's car confirmed that he was driving between 58 and 60 km/h before the accident and only began slowing half a second before impact. The black box in Mr. Pedersen's truck confirmed that he was stopped before the accident and accelerated slowly up to 25 km/h at the moment of the accident.
21. There is no written report in evidence and the ICBC notes about what was recorded on the black boxes are hearsay. Under section 42 of the CRTA, the CRT can accept evidence that is not admissible in court, including hearsay evidence. Here, both parties rely on the black box information, which generally confirms both of their accounts of their driving behaviour immediately before the accident. Because both parties accept it as accurate, I accept the evidence about the information recorded in both black boxes.
22. In the absence of any objective evidence about who had a green light, I find that this dispute turns on credibility. Part of assessing credibility is assessing whose account is more in harmony with what a practical and informed person would consider reasonably likely in the circumstances. In other words, whose account of the accident is more consistent with common human experience?

23. Mr. Pedersen makes 2 arguments about why his account is more credible than Mr. Makkar's. First, he argues that it makes no sense that he would be stopped at a red light and then start moving while the light was still red. Second, Mr. Pedersen relies on the fact that Mr. Makkar admittedly did not apply his brakes until immediately before the collision. Given that Mr. Pedersen was most of the way through the intersection, he says that this suggests that Mr. Makkar was not paying close attention to the road. If he had, he would have started slowing down sooner.
24. I agree with Mr. Pedersen's arguments. I find that it is unlikely that a driver who was stopped at a red light would then enter the intersection while the light was still red.
25. More importantly, I find the fact that Mr. Makkar did not brake until half a second before the accident suggests that he was not paying close attention to the road. Otherwise, I find that he would have seen and reacted to Mr. Pedersen's truck sooner, since by the time of the collision, Mr. Pedersen had crossed several lanes of 72<sup>nd</sup> Avenue in front of Mr. Makkar. I also note that in Mr. Makkar's initial statement to ICBC, he said that he "thought" that the light was green, which suggests he initially had some doubt about what happened.
26. For these reasons, I find that Mr. Makkar likely ran a red light. I find that Mr. Pedersen was proceeding through the intersection on a green light. I find that there is no evidence to suggest that Mr. Pedersen was contributorily negligent. I find that Mr. Makkar is 100% liable for the accident.

### ***Damages Analysis***

27. As mentioned above, the parties agree that Mr. Pedersen is entitled to \$5,627 in non-pecuniary damages, subject to my decision on liability. Because I have found Mr. Makkar 100% liable for the accident, I order Mr. Makkar to pay Mr. Pedersen \$5,627.
28. Mr. Pedersen initially claimed \$2,000 for accelerated vehicle depreciation. In his submissions, he asked to increase this claim to \$6,000. Mr. Makkar objects to Mr. Pedersen trying to increase his claim during submissions.

29. CRT rule 1.19 applies to amendments to a Dispute Notice. Under this rule, the CRT will only amend a Dispute Notice during the decision phase in extraordinary circumstances. I find that it is appropriate to permit Mr. Pedersen to increase his claim for accelerated depreciation to \$6,000 despite the fact that he did not request it until this very late stage in the proceeding. I say this primarily because I find that Mr. Makkar is not prejudiced by the amendment. Mr. Makkar provided expert evidence to support his position about the truck's depreciation and provided submissions about Mr. Pedersen's expert evidence in support of his amended \$6,000 claim. Bearing in mind that the CRT's mandate includes flexible and informal resolution of dispute on their merits, I allow the amendment.
30. Turning to the claim itself, in his Dispute Response, Mr. Makkar initially disputed Mr. Pedersen's claim but in submissions conceded that the accident caused between \$2,000 and \$2,300 in accelerated depreciation. Mr. Makkar seeks to rely on evidence from an ICBC estimator, Kelly Stapleton, as expert evidence. Kelly Stapleton has been an ICBC employee doing vehicle appraising and estimating for 20 years. I accept that Kelly Stapleton is qualified by experience to give expert evidence about the impact of an accident on vehicle value.
31. The CRT rules also require experts to be impartial. While there is no suggestion that Kelly Stapleton has any personal interest in the outcome of this dispute, they are not entirely impartial because their opinion is about how much their employer, ICBC, should pay Mr. Pedersen. That said, I note that the opinion is contrary to Mr. Makkar's initial position that there was no accelerated depreciation, which suggests a level of independence. On balance, I accept Kelly Stapleton's opinion as expert evidence, but I find that it is entitled to less weight than a truly impartial expert witness.
32. In their opinion, Kelly Stapleton provided 4 used truck listings similar to Mr. Pedersen's truck, 2 with and 2 without accident histories. Using those listings, they estimated that the truck's overall accident history reduced its value by \$2,309. Kelly Stapleton noted that the truck had previous claims before the accident. Based on the

value of those claims, they attributed 91% of the truck's depreciation to the accident, which is \$2,101.90.

33. Mr. Pedersen relies on a letter from Brad Hofstad. In the letter, they said that they have been a lease specialist for over 20 years, and that part of that job is assessing the market value of used vehicles for trade ins. I find that Brad Hofstad is qualified by experience to give expert evidence about the truck's market value.
34. Brad Hofstad said that they would offer \$40,000 for the truck with its current accident history and \$46,000 if it had no accident history. However, I agree with Mr. Makkar that Brad Hofstad's letter does not provide enough detail about how they came to that opinion to be reliable. Brad Hofstad only refers to an unnamed "third-party purchaser" as a source for how they determined the 2 market values. There is no reference to any advertisements or past purchases of similar used trucks. I therefore place little weight on Brad Hofstad's opinion.
35. On balance, I place more weight on Kelly Stapleton's opinion because it is better supported by objective evidence. I accept Kelly Stapleton's opinion that the truck's accident history reduced its value by \$2,309. However, I find that they fail to explain the basis for dividing that depreciation among the 3 accidents. The 2 previous claims were both for vandalism, and were for \$2,430.89 and \$426.27, respectively. The repairs after the accident in this dispute cost \$28,112.71. Kelly Stapleton does not explain why the relatively minor repairs for vandalism would have any impact on the truck's market value. I find that the accident caused \$2,309 in accelerated depreciation and order Mr. Makkar to pay Mr. Pedersen this amount.
36. Finally, Mr. Pedersen asks for an order that Mr. Makkar "remove" the increase in his insurance premiums. I dismiss this claim for 3 reasons. First, as I interpret his claims, he does not ask Mr. Makkar to reimburse him for past insurance increases. Rather, I find that his claim is directed at ICBC because Mr. Makkar cannot change Mr. Pedersen's insurance premiums. ICBC is not a party to this dispute, and I cannot make orders against non-parties. Second, even if ICBC was a party, I would still dismiss this claim. This is because he is asking for an order that ICBC do something.



These are called injunctive orders. I find that the CRT does not have jurisdiction, or legal authority, to order ICBC to change a person's insurance premiums under the CRT's jurisdiction over accident claims under section 133 of the CRTA. Finally, given my conclusion on liability, this accident should no longer impact Mr. Pedersen's insurance rates.

## **FEES, EXPENSES AND INTEREST**

37. The *Court Order Interest Act* (COIA) applies to the award for accelerated depreciation. I find that Mr. Pedersen is entitled to accelerated depreciation from the date of the accident to the date of this decision. This equals \$21.71. Under section 2 of the COIA, there is no prejudgment interest on non-pecuniary damages for personal injuries.

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. Mr. Pedersen was partially successful, so I find he is entitled to reimbursement of half of his \$175 in CRT fees, which is \$87.50. For the same reason, I find that Mr. Makkar is entitled to reimbursement of half of his \$25 in CRT fees, which is \$12.50. The net result is that Mr. Makkar must pay Mr. Pedersen \$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. Makkar to pay Mr. Pedersen a total of \$8,032.71, broken down as follows:

- a. \$5,627 in non-pecuniary damages,
- b. \$2,309 in accelerated depreciation damages,
- c. \$21.71 in prejudgment interest under the COIA, and
- d. \$75 in CRT fees.

40. Mr. Pedersen is also entitled to post-judgment interest under the *Court Order Interest Act*.

41. I dismiss Mr. Pedersen's remaining claims.

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.

---

Eric Regehr, Tribunal Member