



Civil Resolution Tribunal

Date Issued: August 26, 2021

File: VI-2020-009487

VI-2021-003077

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Sandrin v. Ali*, 2021 BCCRT 938

BETWEEN:

RAY SANDRIN

APPLICANT

AND:

NAJMEDDINE MOHAMAD ALI and HANNAN ALI

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. These linked disputes are about a motor vehicle accident that took place on June 26, 2019, in North Vancouver, BC.
2. The applicant, Ray Sandrin, was parallel parked on Lonsdale Avenue. Mr. Sandrin and the respondent, Najmeddine Mohamad Ali, collided as Mr. Sandrin was pulling

out of the parking spot. They each say that the accident was the other's fault. While not clear on the evidence before me, I infer that the other respondent, Hannan Ali, is an owner of the vehicle Mr. Ali was driving.

3. Mr. Sandrin alleges that he was injured in the accident. The parties dispute whether Mr. Sandrin's injuries are "minor injuries" under the *Insurance (Vehicle) Act* (IVA). In dispute VI-2021-003077, Mr. Sandrin asks for a determination of whether his injuries are minor injuries. In dispute VI-2020-009487, Mr. Sandrin asks for a determination of who was liable for the accident, and for \$50,000 in pain and suffering (non-pecuniary) damages.
4. I have been asked to determine liability for the accident. This is because if I find that Mr. Ali was not responsible for the accident, Mr. Sandrin will not be entitled to compensation so both disputes will be dismissed. If I find that Mr. Ali was fully or partially responsible for the accident, the 2 disputes will continue through the CRT's process. The issues of whether Mr. Sandrin's injuries are minor and what damages he may be entitled to are not before me in this hearing.
5. Mr. Sandrin is self-represented. The respondents are both represented by an Insurance Corporation of British Columbia (ICBC) employee.

JURISDICTION AND PROCEDURE

6. 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 IVA. 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.
7. 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.

8. The CRT provided the applicant with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Mr. Sandrin whether he wanted to continue with the CRT dispute or file a court proceeding instead. He chose to continue at the CRT.
9. 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.
10. 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, the drivers in 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.
11. 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

12. The issue in this decision is who is liable for the accident.

BACKGROUND

13. In a civil claim such as this, Mr. Sandrin as the applicant must prove his claims 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.

14. The following facts are undisputed. The accident occurred on Lonsdale Avenue in North Vancouver, BC. Lonsdale Avenue has 2 travelling lanes and parallel street parking in each direction. Mr. Sandrin was parked in a parallel parking spot, with other vehicles parked immediately behind and in front of him. The parties were both driving north when the accident occurred.

15. Mr. Ali was initially driving in the left travelling lane. Traffic in this lane was stopped ahead of Mr. Ali because a vehicle was waiting to turn left. Before he reached the backed up traffic, Mr. Ali changed lanes into the right lane. At around the same time, Mr. Sandrin began pulling out of his parking spot. The front left corner of Mr. Sandrin's vehicle collided with the front right corner of Mr. Ali's vehicle. The outcome of this dispute depends on the timing and sequence of these events, which is disputed.

16. A witness who was driving behind the parties provided ICBC with their dashcam footage of the accident. Mr. Sandrin also had dashcam footage. I discuss the video footage below. There are no independent witness statements.

EVIDENCE AND ANALYSIS

17. Mr. Sandrin says that he was parked in the 3rd parking space back of the intersection between Lonsdale Avenue and 17th Street. He says that before he left the parking space, he put on his left turn signal and shoulder checked. He says that he saw a white truck about to pass him in the right lane, so he waited. He also says that he saw Mr. Ali's vehicle in the left lane approaching the stopped traffic but did not see a turn signal. He says that he saw a gap after the white truck that was long enough for him to safely pull out, so he did. He says that when he was about halfway into the lane, Mr. Ali struck him.
18. Turning to Mr. Ali's account of the accident, as a preliminary matter, Mr. Sandrin points out that there is no signed statement from Mr. Ali. Rather, there are internal ICBC notes from a conversation with an ICBC adjuster. This is true. However, the notes were written in the first person from Mr. Ali's perspective. The note indicates that the adjuster read the statement back to Mr. Ali, who confirmed it was true. I therefore find the words in the statement are Mr. Ali's and not an ICBC adjuster's summary. Given that the CRTA allows the CRT to accept hearsay evidence, I accept this evidence as Mr. Ali's statement about what happened.
19. In contrast to Mr. Sandrin's account, Mr. Ali says that as he approached the stopped traffic, he put on his signal and checked his mirrors and blind spot before beginning to change lanes. He says that he had fully merged into the right lane and driven about 7 or 8 metres when he saw Mr. Sandrin pull out right in front of him. He says that he did not see Mr. Sandrin signal or shoulder check and had no time to react before Mr. Sandrin hit his vehicle.
20. Mr. Sandrin says that Mr. Ali breached section 151 of the *Motor Vehicle Act* (MVA), which requires drivers not to change lanes unless it can be done safely and without interfering with another vehicle's travel. For his part, Mr. Ali says that Mr. Sandrin breached section 169 of the MVA, which prohibits drivers from moving a parked vehicle unless it is reasonably safe to do so. Mr. Sandrin accepts that section 169 of the MVA places a heavy burden on him but says that he acted reasonably and safely.

Mr. Sandrin argues that Mr. Ali was fully responsible for the accident, or alternatively, that he was at least 50% responsible.

21. Mr. Sandrin makes several arguments about how the dashcam footage from the following driver and Mr. Ali's statement show that Mr. Ali is fully or partially at fault for the accident.
22. Based on the dashcam footage from the following driver, Mr. Sandrin argues that Mr. Ali did not sufficiently warn other motorists of his intention to change lanes. He says that the video shows only 2 blinks of the signal. He also argues that Mr. Ali's lane change was "abrupt", and that Mr. Ali was still changing lanes when the collision occurred. Mr. Sandrin argues that he was already angling out of the parking spot when Mr. Ali began his lane change, so Mr. Ali should have seen him and should not have changed lanes.
23. Having carefully reviewed this dashcam footage, I disagree with all of the above arguments.
24. I find that the video shows Mr. Ali signalling before he left his lane of travel. I find that he complied with section 151(c) of the MVA by not changing lanes without first signalling his intention to do so.
25. I find that Mr. Ali's lane change was gradual, as it took around 3 seconds to move from the left lane into the right lane. I find that when Mr. Ali started his lane change, he was well behind where Mr. Sandrin was parked. At this point, I find that Mr. Sandrin had not moved yet. I find that immediately before the collision, Mr. Ali was fully in the right lane, although it appears that his vehicle was not yet pointed completely straight ahead. In other words, I agree with Mr. Ali that when Mr. Sandrin began leaving his parking space, Mr. Ali was established in the right lane. It follows that I disagree with Mr. Sandrin's allegation that he was already exiting the parking space when Mr. Ali started his lane change. To the contrary, I find that Mr. Ali was there to be seen in the right lane for at least a second before Mr. Sandrin had started moving his vehicle out of his parking space.

26. Mr. Sandrin also argues that Mr. Ali should have had enough time to stop before the collision. He says that Mr. Ali said in his statement that Mr. Sandrin started to pull out when Mr. Ali was 7 to 8 metres away, which Mr. Sandrin says is enough time to take some action, like braking or honking. I find that Mr. Sandrin misunderstands Mr. Ali's statement. Mr. Ali does not say that he was 7 to 8 metres away from Mr. Sandrin when Mr. Sandrin pulled out. He says that he drove for 7 to 8 metres in the right lane before Mr. Sandrin pulled out, which I find is a reasonable estimate based on the video.
27. Mr. Sandrin also argues that the vehicle damage supports his contention that Mr. Ali was not fully established in the right lane before impact. He says that the damage was to Mr. Ali's SUV's front right corner, which he says is inconsistent with Mr. Ali driving straight ahead. I find that the dashcam video speaks for itself in terms of how the vehicles impacted each other and that the photos of the vehicle damage do not undermine Mr. Ali's account.
28. Finally, Mr. Sandrin argues that Mr. Ali should have looked in front of him before starting his lane change. He relies on Mr. Ali's statement that he looked in his blind spot before changing lanes but says nothing about scanning the line of parked cars ahead of him for turning signals. He argues that Mr. Ali should have checked ahead of him for hazards. Based on the distance between Mr. Ali and Mr. Sandrin when Mr. Ali started changing lanes, I find that there was no hazard for Mr. Ali to see.
29. Based on the above, I find that when Mr. Sandrin began pulling out of his parking space, it was not safe for him to do so because Mr. Ali was established in the right lane. I find that Mr. Sandrin's decision was a breach of section 169 of the MVA. I find that Mr. Sandrin's conduct fell below the standard of care of a reasonable driver in the circumstances.
30. As for Mr. Ali, I find that he was not contributorily negligent. I find that when he started his lane change, it was safe to do so. I find that even if he had seen that Mr. Sandrin's signal was on once he was in the right lane, he was entitled to proceed on the assumption that Mr. Sandrin would obey traffic laws and wait for a safe opportunity

to move. I find that when Mr. Sandrin moved, Mr. Ali was already almost beside him and had no reasonable opportunity to react by honking, swerving, or braking.

31. In conclusion, I find that the accident was entirely Mr. Sandrin's fault. I find him 100% liable. As discussed above, it follows that I dismiss Mr. Sandrin's claims in both disputes.

FEES AND EXPENSES

32. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. As Mr. Sandrin was not successful, I find that he is not entitled to reimbursement of his CRT fees. The respondents were successful, so I find Mr. Sandrin must reimburse them \$25 in CRT fees for each dispute, for a total of \$50. None of the parties claimed any dispute-related expenses.

ORDERS

33. I dismiss Mr. Sandrin's claims.
34. Within 30 days of the date of this decision, I order Mr. Sandrin to reimburse the respondents \$50 in CRT fees.
35. The respondents are entitled to post-judgment interest under the *Court Order Interest Act*.

36. 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