



Civil Resolution Tribunal

Date Issued: September 23, 2021

File: VI-2021-000194

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Chen v. Gakpetor*, 2021 BCCRT 1031

BETWEEN:

YI CHEN

APPLICANT

AND:

GEORGE GAKPETOR

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on November 1, 2020 in New Westminster.
2. The applicant, Yi Chen, says she had just completed a left hand turn in her Honda Civic when she was struck by an Acura MDX driven by the respondent, George

Gakpetor. Ms. Chen says Mr. Gakpetor made an illegal right turn into her lane of travel and he is fully at fault for the accident. Ms. Chen says she suffered whiplash and claims \$5,627 in non-pecuniary (pain and suffering) damages and \$1,239 in wage loss for allegedly missing 3.5 days of work.

3. Mr. Gakpetor says he was proceeding straight and had the right of way. He says as he entered the intersection Ms. Chen turned left in front of him and he was unable to avoid colliding with her Civic despite applying his brakes. Mr. Gakpetor says Ms. Chen is fully at fault for the accident.
4. Ms. Chen is self-represented. Mr. Gakpetor 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)(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. On March 2, 2021, the BC Supreme Court ordered that sections 133(1)(c) of the CRTA was unconstitutional and no longer in effect. It also ordered that section 16.1 of the CRTA was unconstitutional to the extent it applied to that provision. 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 section 133(1)(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 Ms. Chen with information about the BC Supreme Court’s decision and the BC Court of Appeal’s partial stay. The CRT asked her whether she wanted

to continue with the CRT dispute or file a court proceeding instead. Ms. Chen 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 that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested 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. 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.
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 have agreed that Ms. Chen is entitled to \$5,627 in non-pecuniary damages, subject to the CRT's determination of fault.

12. The issues in this dispute are:

a. Who was responsible for the accident?

b. To what extent, if any, is Ms. Chen entitled to \$1,239 for wage loss?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil claim such as this, Ms. Chen as the applicant bears the burden of proof on a balance of probabilities (this means “more likely than not”). 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 leading up to the accident are not disputed. The accident occurred on November 1, 2020 at 5:00 pm at the intersection of Howes Street and Highway 91A in New Westminster. It was a clear and dry evening. Prior to the collision both parties were travelling on Howes Street. Ms. Chen was travelling northbound and Mr. Gakpetor was travelling southbound.

15. In Ms. Chen’s northbound direction, Howes Street has 1 through lane and a dedicated lane to turn left onto the Highway 91A connector on-ramp. In Mr. Gakpetor’s southbound direction, Howes Street has 2 through lanes and a dedicated lane for traffic to exit right onto the Highway 91A connector prior to the intersection. There is a marked pedestrian crosswalk that runs across the Highway 91A connector.

16. The parties have different versions of exactly how and where the accident happened. There are no independent witnesses or dash cam footage.

17. Ms. Chen and Mr. Gakpetor rely on their written statements to ICBC made shortly after the accident.

18. Ms. Chen’s version is as follows: She was driving her Civic northbound on Howes Street. The traffic control light was green in her direction of travel and there were no oncoming cars. All of a sudden, after she had fully completed her left turn and was

over the pedestrian crosswalk, Mr. Gakpetor's vehicle struck the right rear corner of her car. She said she had not previously seen Mr. Gakpetor's vehicle and he must have made an "illegal" sharp right turn onto Highway 91A after she completed her turn.

19. Mr. Gakpetor's version is as follows: He was travelling southbound on Howes Street in the right-hand lane to proceed straight through the intersection. All of a sudden, Ms. Chen's Civic made a sharp left turn across the intersection in front of him as the light turned orange. He saw the Civic when he was "exactly at the white stop line", braked quickly, and kept his brake on but the gap between the vehicles was too close and he struck Ms. Chen's Civic.
20. Mr. Gakpetor denied turning right onto the Highway 91A connector. He stated that he was returning home from Walmart and his route required him to proceed straight on Howes Street. Mr. Gakpetor provided a map that shows he lived close to Walmart and his direct route home took him straight through on Howes Street. I note Highway 91A would have taken Mr. Gapkeptor in an entirely different direction.
21. For the reasons that follow, I find Mr. Gakpetor's version is more consistent with the evidence overall.
22. First, Ms. Chen herself says she did not see Mr. Gakpetor at all prior to the accident. Instead, Ms. Chen assumes based on the vehicles' impact damage that he must have turned right at the intersection having missed the dedicated right exit lane. The vehicle damage photographs show damage to Mr. Chen's Civic's rear right passenger door and damage to Mr. Gakpetor's Acura's left front bumper.
23. Reconstructing an accident based on vehicle damage is generally outside of the knowledge or expertise of an ordinary person, which I find is the case here: *Bergen v. Guliker*, 2015 BCCA 283. The only assessment of the damage is ICBC's December 10, 2020 material damage report and it does not support one version of events over the other. There is no expert opinion evidence supporting Ms. Chen's version of events.

24. Ms. Chen submitted a photograph showing her Civic was stopped on the Highway 91A connector over the pedestrian crosswalk. She asserts that the Civic's onboard monitoring system would have cut the engine and stopped the car in this position. If the accident occurred in the photographed location, then I agree with Ms. Chen that she had fully made her left turn at the point of collision. However, she submitted no information about her Civic's monitoring system or other evidence that the Civic stopped moving on impact. I find it implausible that her car would not move from the momentum of the impact. I find Ms. Chen's Civic probably continued to travel onto the Highway 91A after the impact even if her engine turned off.
25. I also find Ms. Chen's version of the accident's location improbable based on the submitted Google Map photograph. The photograph shows a triangle concrete meridian separating Howes Street's right exit lane from the 2 southbound through lanes. The crosswalk where Ms. Chen's Civic came to a stop starts halfway along the meridian. This means that if Ms. Chen's Civic was already over the pedestrian crosswalk as she asserts, the meridian would have blocked Mr. Gakpetor's Acura from entering on an angle. There is no suggestion that Mr. Gakpetor drove over the meridian. Rather, both parties' hand drawn diagrams place Mr. Gakpetor's Acura in the intersection in the right through lane on Howes Street after the collision and not over the meridian on Highway 91A. I find it more likely than not that Mr. Gakpetor was traveling straight through the intersection on Howes Street. I find the collision happened in the intersection itself.
26. I turn now to the law.
27. Section 144 of the *Motor Vehicle Act* (MVA) says a person must drive with due care and attention or with reasonable consideration for the road's other users, or at a speed not excessive relative to the road, traffic, or weather conditions.
28. MVA section 174 says that a driver intending to turn left at an intersection must yield the right of way to traffic approaching from the opposite direction that is either in the intersection, or so close that it constitutes an immediate hazard. Having complied with

this, the left turning driver may start their left turn, at which point traffic approaching from the opposite direction must yield the right of way to the left turner.

29. Ms. Chen relies on the non-binding CRT decision, *Williams v. Balogh*, 2020 BCCRT 551, which similarly involved a left turning applicant. I find the facts in *Williams* are otherwise different. In *Williams*, the respondent had entered and illegally travelled down a restricted bus lane after the left turning applicant had complied with MVA section 174, which did not happen here.
30. Mr. Gakpetor relies on the Provincial Court decision in *Hall v. Gou*, 2007 BCPC 397. I find the facts here are somewhat similar to those in *Hall*. In *Hall*, the claimant was traveling south on Oak Street through an intersection on an orange light. When the claimant was 5-7 feet into the intersection, the defendant driver turned left in front of the claimant's vehicle. The claimant swerved and braked but could not stop on time. The defendant gave no explanation for not seeing the claimant's car. The judge held the defendant was 100% at fault.
31. I find MVA section 174 applies to this accident. Ms. Chen was the servient driver, as she was turning left at the controlled intersection. I find Ms. Chen had an obligation to not proceed unless she could safely make the turn. I do not accept Ms. Chen's assertion there was no oncoming traffic. I find Mr. Gakpetor's vehicle proceeding straight through on Howes Street was clearly oncoming traffic and I find it was an immediate hazard. I find Ms. Chen was required to yield the right of way to him under MVA section 174, and I find she did not do so. I find that her behaviour fell below the standard of care of a reasonably prudent driver in the circumstances.
32. As the dominant driver proceeding straight through the intersection, I find Mr. Gakpetor was permitted to assume Ms. Chen would yield the right of way. There is no evidence that Mr. Gakpetor was speeding or driving without due care. I accept Mr. Gakpetor's unrefuted evidence that he braked when he noticed Ms. Chen's Civic turn in front of him but it was too late and he was unable to avoid the collision. I find Mr. Gakpetor did nothing wrong. In the circumstances, I find Ms. Chen is 100% at fault for the accident.

33. Considering my conclusion on fault, I find no need to address Ms. Chen's damages claims. I dismiss Ms. Chen's claims for wage loss and non-pecuniary damages.
34. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Ms. Chen was not successful, I find that she is not entitled to reimbursement of her CRT fees. As the successful party, I find Ms. Chen must reimburse Mr. Gakpetor \$25 for his paid CRT fees. The parties claimed no other dispute-related expenses.

ORDERS

35. Within 30 days of the date of this decision, I order Ms. Chen to pay Mr. Gakpetor a total of \$25 in CRT fees.
36. I dismiss Ms. Chen's claims.
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.

Trisha Apland, Tribunal Member