



# Civil Resolution Tribunal

Date Issued: September 23, 2021

File: VI-2020-009981

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Huynh v. Corea Arguello*, 2021 BCCRT 1030

BETWEEN:

TINA HUYNH

**APPLICANT**

AND:

CARLOS ALBERTO COREA ARGUELLO

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on December 30, 2019 in Vancouver, BC. The applicant, Tina Huynh, and the respondent, Carlos Alberto Corea Arguello, collided on Slocan Street. Ms. Huynh says she was driving straight when Mr. Corea Arguello pulled out from a parallel parking spot and collided with her

vehicle. Mr. Corea Arguello says he was turning left when Ms. Huynh moved into oncoming traffic and tried to pass him on the left, when she collided with his vehicle.

2. The parties' insurer, Insurance Corporation of British Columbia (ICBC), internally found each party 50% responsible because it could not determine who was at fault. ICBC is not party to this dispute. Its determination is not binding on me.
3. Ms. Huynh was undisputedly injured in the accident. The parties agree that Ms. Huynh's injuries are "minor injuries" as defined in section 101 of the *Insurance (Vehicle) Act*. The parties also agree that Ms. Huynh's non-pecuniary (pain and suffering) damages are \$5,500, subject to my liability determination. Ms. Huynh has not claimed any other damages.
4. Ms. Huynh is self-represented. Mr. Corea Arguello 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* (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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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 Ms. Huynh with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Ms. Huynh whether she wanted to continue with the CRT dispute or file a court proceeding instead. Ms. Huynh 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. Much of the evidence in this dispute amount to a "he said, she 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. 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.

## **ISSUE**

11. The issue in this dispute is who is responsible for the December 30, 2019 accident.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

12. In a civil claim such as this, as the applicant, Ms. Huynh bears the burden of proof on a balance of probabilities (which means “more likely than not”). While I have read all of the parties’ evidence and submissions, I refer only to what I find is necessary to explain my decision.
13. It is undisputed that the accident occurred on December 30, 2019 at approximately 7:00 p.m. It was dark and the roads were wet. Ms. Huynh was travelling northbound on Slocan Street, just past Kingsway in Vancouver, BC, when she collided with Mr. Corea Arguello. However, the parties have very different accounts of how the accident happened.
14. Ms. Huynh says that she was proceeding straight along Slocan Street, and had gone past an alley just north of Kingsway. She says she saw Mr. Corea Arguello parallel parked, also facing north on Slocan Street, and assumed he would not move until she had passed. She says that as she was passing Mr. Corea Arguello, he suddenly pulled out from his parking spot and struck her vehicle on the passenger side right front wheel. Ms. Huynh also says Mr. Corea Arguello admitted he was responsible for the accident, as he did not see her when he was pulling out.
15. In contrast, Mr. Corea Arguello says that he turned right onto northbound Slocan Street from Kingsway, and then came to a stop so he could turn left into the alley just north of Kingsway. Mr. Corea Arguello says that he had his left turn signal on, and he waited for southbound traffic to clear before starting his left turn. He says he did not see Ms. Huynh before the collision, but he says she was trying to pass him in the oncoming southbound lane on Slocan Street. He says their vehicles collided as he was starting his left turn and the front of his vehicle was in the southbound lane of travel.

16. There was no video or dashcam footage of the accident, and there were no independent witnesses. However, Mr. Corea Arguello's wife, MC, was a passenger in his vehicle at the time, and she provided a written January 11, 2021 statement to an independent insurance adjuster, WK. Ms. Huynh's friend, DN, came to the accident scene to pick her up, and he also provided a written statement to WK, dated January 10, 2021.
17. MC's statement essentially corroborated Mr. Corea Arguello's version of the accident. Specifically, MC stated that Mr. Corea Arguello stopped with his left turn signal on and waited for "incoming" cars. She said that once traffic cleared, he started his left turn into the alley, and Ms. Huynh came "out of nowhere" and impacted their vehicle. MC stated that the impact pushed their vehicle into a straight position, and Ms. Huynh's vehicle came to rest beside them in the opposite lane.
18. DN stated that when he arrived at the scene, both vehicles were parked northbound on Slocan Street, near Ward Street, which is one block north of Kingsway. DN said he asked Mr. Corea Arguello what happened, and Mr. Corea Arguello told him he had pulled out and hit Ms. Huynh. Mr. Corea Arguello denies talking about the accident with Ms. Huynh, and in a January 10, 2021 statement to WK, Mr. Corea Arguello said he does not remember discussing anything with DN.
19. As for the vehicle damage, Mr. Corea Arguello provided an ICBC file note made by material damage estimator Wing Wong, which stated that the damage would be the same with either party's version of the accident. This is undisputed, and from my own review of the parties' statements and the photographs of the vehicle damage, I accept that the vehicle damage is consistent with both Ms. Huynh's version and Mr. Corea Arguello's version.
20. Mr. Corea Arguello relies on the BC Provincial Court decision in *Gilbert v. Bains*, 2010 BCPC 0152, to argue that if I am unable to establish the different degrees of fault based on the evidence, I should apportion responsibility equally between the parties in accordance with section 1(2) of the *Negligence Act*. In *Gilbert*, the adjudicator was unable to reasonably conclude how the accident had occurred because the vehicle

damage was equally consistent with either party's version of events, and he found the parties' and witness testimony unreliable. However, the adjudicator found that the accident was caused by a combination of factors for which each party bore some responsibility. In other words, he found both parties had acted negligently, even though he couldn't determine exactly what had happened.

21. I find the reasoning in *Gilbert* cannot be applied here. This is because I find that the parties' 2 versions of the accident in this case are so different that they cannot be reconciled. Only one party's version can be accepted. Given that Ms. Huynh bears the burden of proving her claims, she must show that her version is more likely than not. For the following reasons, I find she has met that burden.
22. First, I note that Mr. Corea Arguello argues Ms. Huynh's account of the accident has been somewhat inconsistent throughout her interactions with ICBC. However, I find the alleged inconsistencies are very minor and do not impact the overall credibility of her statements. I find Ms. Huynh has consistently stated that Mr. Corea Arguello pulled out of a parallel parking spot along northbound Slocan Street, as she was proceeding straight at about 50 kilometres per hour.
23. Next, while I acknowledge that Mr. Corea Arguello has also been consistent in reporting his version of the accident, I find there are aspects of his story that are not persuasive. For instance, both Mr. Corea Arguello and MC stated that Mr. Corea Arguello waited for southbound cars to pass before starting his left turn. Ms. Huynh also stated there were southbound vehicles at the time of the accident. So, it is unclear how Ms. Huynh would have been able to move into the southbound lane to go around Mr. Corea Arguello, if there were already vehicles in the southbound lane behind him.
24. Further, the photographs of the northbound lane of Slocan Street show there is a bus stop just before the alley north of Kingsway. A photograph taken the night of the accident confirms there were no cars parked on northbound Slocan Street between Kingsway and the alley. I agree with Ms. Huynh that if there was a vehicle waiting to turn left into the alley, the bus stop provided enough room to pass on the right.

25. Therefore, even if I accepted that Ms. Huynh approached Mr. Corea Arguello quickly and did not realize he had stopped to turn left, I find it is unlikely she would have tried to pass him in the oncoming lane when there was room to pass him on the right. This is particularly so if he had his left turn signal on and there was southbound traffic that had just passed him, as he alleges.
26. When faced with such conflicting versions of events, each party's evidence must be evaluated against its "harmony with other evidence, the preponderance of the probabilities, and with its overall reasonableness" (*Go Transport Ltd. v. Moore*, 2021 BCSC 1099 at paragraph 15, referring to *Faryna v. Chorny* (1951), 1951 CanLII 252 (BC CA)). Given the factors set out above, I find Mr. Corea Arguello's statement that Ms. Huynh crossed into oncoming traffic, either to overtake him or to avoid a collision, lacks logic and credibility.
27. I find Ms. Huynh's version is more consistent with ordinary human experience and is generally a more reasonable explanation of what likely happened. I find this is enough to tip the balance in favour of accepting Ms. Huynh's version over Mr. Corea Arguello's version. On balance, I find that Mr. Corea Arguello was parked along Slocan Street and pulled out as Ms. Huynh was passing him, causing the collision.
28. Section 169 of the *Motor Vehicle Act* (MVA) says a person must not move a vehicle that is stopped, standing, or parked unless the movement can be made with reasonable safety and the driver first gives the appropriate signal. I find that had Mr. Corea Arguello kept a proper lookout, he would have seen Ms. Huynh approaching. I find it was unsafe for Mr. Corea Arguello to pull out from his parked position when he did, and in doing so he breached MVA section 169. I find that Mr. Corea Arguello's actions fell below the standard of a reasonably competent driver in the circumstances.
29. I also find that Ms. Huynh had the right of way, and there is no basis to find she bears any responsibility for the accident. I find Mr. Corea Arguello is 100% at fault.
30. I order Mr. Corea Arguello to pay Ms. Huynh the agreed-upon \$5,500 for pain and suffering damages.

## **FEES, EXPENSES AND INTEREST**

31. The *Court Order Interest Act* 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. Huynh is not entitled to pre-judgment interest.
32. 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. I find Ms. Huynh is entitled to reimbursement of \$175 in CRT fees. She did not claim any dispute-related expenses. I dismiss Mr. Corea Arguello's claim for reimbursement of his CRT fees.

## **ORDERS**

33. Within 30 days of the date of this decision, I order Mr. Corea Arguello to pay Ms. Huynh a total of \$5,675, broken down as follows:
  - a. \$5,500 in damages, and
  - b. \$175 in CRT fees.
34. Ms. Huynh is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
35. 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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Kristin Gardner, Tribunal Member