



Civil Resolution Tribunal

Date Issued: October 22, 2021

File: VI-2020-006702

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Bai v. Yun*, 2021 BCCRT 1118

BETWEEN:

JOHN ZHENHONG BAI

APPLICANT

AND:

HA YOUNG YUN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on February 26, 2020, in Vancouver, BC. The applicant, John Zhenhong Bai, was driving east on Kingsway Avenue, intending to proceed straight through the intersection with Boundary Road. The respondent, Ha Young Yun,ⁱ was driving west on Kingsway, intending to turn left

at the same intersection. They collided in the intersection while Ha Young Yun was making their turn. The parties disagree about whose fault the accident was. In particular, the parties dispute what colour the light was when Mr. Bai entered the intersection. Mr. Bai says it had just turned yellow so he could not safely stop. Ha Young Yun says that it was either a very late yellow or already red so Mr. Bai should have stopped.

2. Mr. Bai initially claimed \$5,627 in non-pecuniary (pain and suffering) damages. The parties have since agreed that his non-pecuniary damages are \$5,500, the maximum amount for “minor injuries” as defined by the *Insurance (Vehicle) Act* at the time of the accident. Mr. Bai’s non-pecuniary damages award, if any, depends on my liability finding.
3. Mr. Bai also claims \$50,000 in property damage. He says that his vehicle, a 1995 Cadillac Fleetwood Brougham, was a collector’s car that was in perfect condition. It was undisputedly a total loss after the accident. Ha Young Tun says that Mr. Bai’s car was worth \$1,635.71, based on a valuation done by their insurer, Insurance Corporation of British Columbia (ICBC). ICBC is not a party to this dispute.
4. Mr. Bai has abandoned any award over \$50,000, which is the maximum amount he can receive under the Civil Resolution Tribunal’s (CRT) jurisdiction over motor vehicle claims about liability and damages.
5. Mr. Bai is self-represented. Ha Young Yun is represented by an ICBC employee.

JURISDICTION AND PROCEDURE

6. These are the CRT’s formal written reasons. 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.

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 Mr. Bai with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Mr. Bai whether he wanted to continue with the CRT dispute or file a court proceeding instead. Mr. Bai 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, 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.

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.

ISSUES

12. The issues in this dispute are:

- a. Who is liable for the accident?
- b. If Ha Young Yun was fully or partially at fault, what are Mr. Bai's damages?

BACKGROUND

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

14. As mentioned above, the accident occurred on February 26, 2020, at around 9:30 pm. It was a dark and rainy night. The parties collided in the intersection of Kingsway and Boundary when Ha Young Yun tried to turn left in front of Mr. Bai. The front left of Mr. Bai's vehicle collided with the right front of Ha Young Yun vehicle. This much is undisputed.

15. There is no dashcam or other video footage of the accident. There are statements from 2 independent witnesses, as discussed below.

16. Mr. Bai was undisputedly injured in the accident. As mentioned above, the parties agree that his damages for pain and suffering are \$5,500, subject to my liability determination. Mr. Bai did not claim any other damages as a result of his injuries.

EVIDENCE AND ANALYSIS

Who is liable for the accident?

17. First, I will address the inconsistent terms the parties and witnesses used to describe the eastbound lanes on Kingsway. At this intersection, Kingsway has 3 through lanes and a dedicated left turn lane in each direction. The curb lane is available for traffic during peak hours and for parking at off-peak hours. So, at the time of the accident, I find that there were only 2 through lanes. One witness, JL, referred to right the through lane as the “middle lane”. Ha Young Yun refers to it as the “curb lane” and calls the left through lane the “middle lane”. Mr. Bai argues that Ha Young Yun’s evidence, in particular, is incorrect when they describe which lane Mr. Bai was in. I find from context that the parties and witnesses all agree about which lane Mr. Bai was in. They simply used different terms. I find that Mr. Bai was in the right through lane. For clarity, I will refer to this lane as the right lane, the left through lane as the middle lane, and the designated left turn lane as the left lane.
18. Mr. Bai did not provide a detailed account in his submissions of how the accident happened. I find that he adopts the account he provided by phone to ICBC on February 28, 2020, because he did not provide a different account. His statement was as follows. Mr. Bai was travelling 50 km/h as he approached Boundary. The light turned yellow when he was 10 to 12 feet from the intersection. He felt that this was too close to safely stop, so he proceeded into the intersection. He could see Ha Young Yun’s headlights, but they were too bright to see whether they had their turn signal on. Ha Young Yun started their turn after Mr. Bai was already in the intersection. He had no time to react before they collided.
19. In contrast, Ha Young Yun provides the following account. The light was green as they approached Boundary to turn left. There was through traffic eastbound, so they stopped in the intersection to wait to make the left. The light turned yellow while they were stopped. After the light turned yellow, the eastbound traffic in the left and middle lanes on Kingsway slowed and stopped. Ha Young Yun could not see any traffic in the right lane. So, they slowly began their turn just as the light turned red. Mr. Bai

entered the intersection as Ha Young Yun crossed into the right lane and they collided.

20. As mentioned above, there were 2 independent witnesses, JL and TP. They both provided ICBC with telephone statements shortly after the accident and signed more detailed statements, including diagrams, for this dispute.
21. JL provided the following account in a written statement dated September 19, 2020. They were driving about 1.5 car lengths behind Mr. Bai in the right lane. They were both going below the 50 km/h speed limit. When JL was about 2 car lengths from the intersection, they saw that the pedestrian counter was at 2 and the light was yellow. Mr. Bai was “at the point of no return”, so he sped up to get through the intersection. At the same time, Ha Young Yun had been waiting to turn left and was inching forward. When Mr. Bai entered the intersection, Ha Young Yun turned left “not very fast”. JL did not see Ha Young Yun pause or hesitate during the turn. JL described the light as a “late yellow” when Mr. Bai entered the intersection because the light turned red right just as the accident happened.
22. TP provided the following account in a written statement dated October 14, 2020. TP was standing at the northeast corner of the intersection waiting to cross Kingsway to the northwest corner. They saw Ha Young Yun waiting in the intersection to turn left. The light on Kingsway turned yellow and the vehicles in the left and middle lanes came to a stop. After those vehicles had stopped, Ha Young Yun started their turn and the light turned red “a split second” later. When Ha Young Yun was crossing the right lane, Mr. Bai entered the intersection and collided with them. The light had already turned red when Mr. Bai entered the intersection.
23. In summary, Ha Young Yun and TP provided very similar accounts of the accident. JL’s account is generally more similar to Mr. Bai’s account than Ha Young Yun’s. I must weigh this contradictory evidence. In doing so, I must consider each person’s ability to observe what happened, whether their evidence seems unreasonable, impossible, or unlikely, and whether their account has changed over time. In assessing evidence about a motor vehicle accident, I bear in mind that most

witnesses and parties do their best to describe what they saw, but accidents are typically sudden and unexpected, and last only a few seconds. This means that even an honest witness's memories about what happened can easily be wrong. See *Rattu (Litigation Guardian of) v. Biln*, 2021 BCSC 208, at paragraphs 27 to 29.

24. With that in mind, I place little weight on JL's evidence about what happened immediately before the accident because I find that it is not reliable. I find that it is unlikely that JL observed and recalled the level of detail they provided in their statement. As detailed above, they gave evidence about the distance between JL and the intersection when the light turned yellow, the number on the pedestrian counter at that time, the fact that Ha Young Yun was inching forward before turning, the speed at which Ha Young Tun turned, how far away Mr. Bai was from the intersection when the light turned yellow, and the fact that Mr. Bai sped up when the light turned yellow. All of this likely happened over the course of 1 or 2 seconds. While I do not find that JL was intentionally dishonest in their statement, I find that they likely filled in some gaps in their memory with assumptions or reconstructions. I find that my conclusion is supported by JL's description of the pedestrian counter and traffic light. As described above, JL said that when they were 2 car lengths back from the intersection, the light was already yellow but there were still 2 seconds left on the pedestrian counter. I find that these facts are inconsistent, because if the pedestrian counter was still counting down, the light would still be green.
25. As for TP's statement, Mr. Bai says that they were not well-placed to observe the accident, but I disagree. Mr. Bai provided a photo of the intersection from TP's vantage point. He says that it shows that TP could not have seen the colour of the light. The photo was taken during the day, so I agree that one of the traffic lights is obscured because there are dark trees behind it. However, I find that the illuminated traffic lights would be easily visible at night.
26. I find that TP's evidence is clear and includes a plausible level of detail. Because they were waiting to cross Kingsway, they had a reason to be observing traffic and the traffic lights. There are no meaningful differences between their written statement and

the phone statement they gave to ICBC shortly after the accident. They do not know either party and have no interest in the outcome of this dispute. I therefore place considerable weight on TP's statement.

27. Mr. Bai argues that Ha Young Yun's evidence has changed over time. I infer that he asks me to find that Ha Young Yun's evidence is not credible. In particular, he says that in this dispute Ha Young Yun says that the light was a late yellow when Mr. Bai entered the intersection. Mr. Bai does not explain how the evidence has changed. I have reviewed the ICBC adjuster's notes of Ha Young Yun's 2 phone statements and I find that Ha Young Yun's past statements about the light's colour are essentially the same as in this dispute.
28. Mr. Bai also argues that Ha Young Yun was not wearing corrective lenses as required by their driver's license. He does not say how he knows this. Ha Young Yun does not say whether they were wearing corrective lenses. They just say that there is no evidence that they were not wearing corrective lenses. While this is true, it is somewhat suspicious that Ha Young Yun would not say simply that they were wearing corrective lenses if they were. That said, even if I accepted that Ha Young Yun was not wearing corrective lenses, I am not persuaded that this caused or contributed to the accident. This is because Ha Young Yun's evidence about how the accident happened is clear, reasonably detailed, and consistent with TP's evidence, which I have accepted. This suggests that their vision was not impaired.
29. Weighing this evidence, I find that the traffic light was most likely red when Mr. Bai entered the intersection, although it may have been a very late yellow. Either way, I reject Mr. Bai and JL's evidence that Mr. Bai was too close to the intersection to safely stop when the light turned yellow. I find that the fact that 2 other cars had already stopped suggests that Mr. Bai could have stopped too. I find that Ha Young Yun began turning when the light was still yellow but turned slowly enough that by the time they entered the right lane, the light was red. There is no evidence that either party took any evasive action, braked, or honked their horn. This suggests that neither party saw the other until the last second.

30. There are several sections of the *Motor Vehicle Act* (MVA) that are relevant to this dispute. Section 128(1)(a) of the MVA says that a motorist approaching a yellow light must stop unless it would be unsafe to do so. Section 129(1) says that a motorist approaching a red light must stop. Section 174 of the MVA says that a motorist turning left must yield to oncoming traffic that is either in the intersection or so close to the intersection that it is an immediate hazard.
31. With that, liability for left-turn accidents depends in large part on the colour of the traffic light. When turning on a red or very stale yellow, a left-turning driver like Ha Young Yun is generally entitled to assume that the oncoming drivers will obey the law by stopping at the light. However, they cannot blindly turn without assessing whether it is safe. A left-turning driver must still take reasonable care to avoid an accident. See *Lozinski v. Maple Ridge (District)*, 2015 BCSC 1277, at paragraphs 70 and 71.
32. I find that the facts of this dispute are very similar to those in *Swieczko v. Nehme*, 2016 BCSC 399, which also involved a collision between motorist turning left across a multi-lane road and an oncoming motorist. In that case, the court found the oncoming driver fully at fault. Two key facts are the same in *Swieczko* as in this case. First, the light when the oncoming driver entered the intersection was either red or a very late yellow. Second, the left-turning driver observed that the first 2 lanes of traffic had stopped before he started his turn. The court also noted that these 2 lanes of stopped traffic likely obscured the vehicle in the curb lane. The court also noted that the left-turning driver reasonably needed to get clear of the intersection once the light was red.
33. Following the reasoning in *Swieczko*, I find that Mr. Bai was negligent because he either failed to stop at a late yellow light when it would have been safe to do so or entered the intersection on a red light. I find that when Ha Young Yun began their left turn, it was reasonably safe to do so. I find that even though Ha Young Yun could not see whether there was traffic in the right lane, they were entitled to assume that anyone approaching in that lane would stop at the light because it was turning red. I find that Ha Young Yun did not have a reasonable opportunity to see Mr. Bai until it

was too late. I therefore find that Ha Young Yun was not contributorily negligent. I find that Mr. Bai is 100% liable for the accident.

What are Mr. Bai's damages?

34. Given my conclusion on liability, Mr. Bai is not entitled to any damages for his car. It is therefore not necessary for me to discuss the parties' evidence and submissions about its value. That said, in the event I am wrong, I find that Mr. Bai has not proven that his vehicle is worth more than the \$1,635.71 that ICBC estimated.
35. Mr. Bai relies primarily on 2 eBay ads, one for the same year and model and another for a slightly older model. The ads were in US dollars but show approximate Canadian dollar values of around \$33,000 and \$22,500, respectively. However, Mr. Bai did not provide any details about his car other than its make and model, such as its mileage or features. Notably, Mr. Bai said that he did a lot of work on the car and could provide receipts, but he provided none. Parties are told that they must provide all relevant evidence during the evidence submission phase of the CRT dispute. He also did not provide the entire ads, so there is no way to compare his car to the cars for sale other than the year and model. Most importantly, Mr. Bai did not provide any expert evidence about the car's value or objective evidence like an estimate from a car valuation service. This lack of evidence is especially noteworthy given that Mr. Bai knew about ICBC's significantly lower estimate.
36. This does not mean that Ha Young Yun proved that the car was actually worth only \$1,635.71. They provided no evidence to support the valuation other than the bare assertion that ICBC's estimators gave it that value. They did not provide the estimator's opinion or the information that the estimator based their opinion on. That said, the burden is on Mr. Bai to prove the value of his vehicle, and I find that he failed to provide persuasive evidence about its value.

FEES AND EXPENSES

37. 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. I dismiss Mr. Bai's claim for CRT fees because he was unsuccessful. I order Mr. Bai to reimburse Ha Young Yun \$25 for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

38. Within 30 days of the date of this decision, I order Mr. Bai to pay Ha Young Yun \$25 for CRT fees.

39. Ha Young Yun is entitled to post-judgment interest under the *Court Order Interest Act*.

40. 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

ⁱ The CRT has a policy to use inclusive language that does not make assumptions about a person's gender. As part of that commitment, the CRT asks parties to identify their pronouns and titles to ensure that the CRT respectfully addresses them throughout the process, including in published decisions. As mentioned above, Ha Young Yun is represented by ICBC. ICBC has refused to ask its insureds' pronouns and titles, citing their privacy. I will therefore refer to Ha Young Yun by their full name throughout this decision and use gender neutral pronouns. However, I note that the CRT's process is no different than the BC Supreme Court's and BC Provincial Court's processes, which require counsel to provide a party's pronoun and title, including in ICBC cases.