



Civil Resolution Tribunal

Date Issued: November 2, 2021

File: VI-2020-007550

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Li v. Aujla*, 2021 BCCRT 1157

BETWEEN:

XIAO LI LI

APPLICANT

AND:

SUKHVINDER AUJLA and BNA TRUCK LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on July 21, 2020, in Vancouver, BC. It is undisputed that a vehicle driven by the respondent Sukhvinder Aujla and owned by the respondent BNA Truck Ltd. rear ended the applicant Xiao Li Li. The drivers each say that the other was fully responsible for the accident.

2. Ms. Li says that she was driving in the middle lane of East Broadway and was slowing down to stop for a yellow light when Mr. Aujla ran into her. Mr. Aujla says that Ms. Li had been driving in the left lane. He says that she caused the accident by abruptly changing lanes into the middle lane and then stopping suddenly in front of him.
3. The parties agree that Ms. Li's non-pecuniary (pain and suffering) damages are \$5,627, the maximum amount for "minor injuries" as defined by the *Insurance (Vehicle) Act* at the time of the accident. Ms. Li also claims \$10,000 in future care costs. The respondents argue that Ms. Li has not proven this claim. They also argue that they are accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* that her insurer, the Insurance Corporation of British Columbia (ICBC), will pay. They ask that I dismiss Ms. Li's claim for future care costs. ICBC is not a party to this dispute.
4. Ms. Li also claims \$840.82 in special damages, which consists of the deductible to repair her vehicle, the cost of a courtesy vehicle during repairs, the cost of 2 doctor's notes, and her mileage to attend medical appointments. The respondents dispute the claims for the courtesy car and doctor's notes.
5. Ms. Li is represented by a lawyer, Ryan Kusahara. The respondents are represented by an 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)(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 Ms. Li 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. Li 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. I note that Mr. Kusuhara told CRT staff that he "may" request an oral hearing but did not do so. 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. Ms. Li initially claimed damages for past and future income loss but withdrew these claims during facilitation.
13. The remaining issues in this dispute are:
 - a. Who was responsible for the accident?
 - b. If Mr. Aujla was fully or partially responsible, what are Ms. Li's damages?

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Ms. Li as the applicant must prove her case on a balance of probabilities, which means "more likely than not". 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 July 21, 2020, at around 5:15 pm. The drivers were both going east on East Broadway approaching St. Catherines Street. Ms. Li was driving an SUV. Mr. Aujla was driving a crane truck. East Broadway at this point has 3 lanes in each direction. At the time of the accident, the far right lane was reserved for high occupancy vehicles, busses, and bicycles (HOV lane). Mr. Aujla rear-ended Ms. Li in the middle lane.

Who was responsible for the accident?

16. The parties agree on the applicable law. As a general principle, drivers must pay due care and attention and reasonably consider other users of the road. This standard of care is informed in large part by the rules of the road set out in the *Motor Vehicle Act* (MVA). Several sections of the MVA are relevant to this dispute.
17. Section 128(1) requires drivers to stop at an intersection when there is a yellow light unless stopping would be unsafe. Section 151(a) of the MVA says that a driver must not change lanes if it is unsafe to do so or if it will affect the travel of another vehicle.

18. Section 162(1) of the MVA says that a driver must not follow another vehicle too closely. This places a heavy burden on a following driver to leave enough space to react to unexpected events in front of them. So, in a rear-end accident, the burden is generally on the following driver to show that they were not negligent. This is called an inference of negligence. See *Varga v. Kondola*, 2016 BCSC 2406.
19. With that, I find that Mr. Aujla must prove that he was not negligent because he was the rear driver. The respondents rely on *Cue v. Breitzkreuz*, 2010 BCSC 617. There, the court found that the rear-ending driver was not at fault because the front driver changed lanes abruptly and then stopped, giving the rear-ending driver no opportunity to slow or avoid the accident. With that law in mind, I turn to the evidence.
20. Ms. Li says the following. Before the accident, she was driving in the middle lane. She does not say exactly how long, but I find from context that she says that it was at least several blocks. When she was about 2 to 3 car lengths from St. Catherines, she saw the light turn yellow. She began slowing to stop at the intersection. As she came to a stop, she heard a screeching sound behind her and got hit by Mr. Aujla's truck. She took some photos of the accident scene and exchanged information with Mr. Aujla, and then left.
21. Mr. Aujla says the following. He was in the middle lane as he approached St. Catherines, travelling between 40 and 50 km/h. Ms. Li came up beside him in the left lane and changed into the middle lane right before St. Catherines, cutting him off "pretty bad". She was around 2 car lengths from the intersection and 1 car length in front of him when she changed lanes. The light was green when she made her lane change and it turned yellow as she went in front of him. Ms. Li abruptly stopped immediately after changing lanes. Mr. Aujla braked hard, locking his wheels. He almost stopped before "barely bumping" her. Her vehicle was in the crosswalk when she stopped. I note that a comparison between the line markings and landmarks in Ms. Li's accident scene photos and the satellite maps in evidence supports Mr. Aujla's evidence that she was partially in the crosswalk. Also, Ms. Li does not dispute this and does not say that the impact pushed her forward.

22. There was an independent witness to the accident, HS, who returned to the scene several minutes after the accident. By that time, Ms. Li had left. HS gave his contact information to Mr. Aujla. I note that the parties dispute how long it took HS to return to the accident scene and how long Ms. Li was there before leaving, but I find nothing turns on this.
23. HS provided a written statement for this dispute, dated October 17, 2020. HS said the following. Ms. Li was behind HS in the middle lane. Mr. Aujla was in the HOV lane. Ms. Li changed into the left lane, passed HS, and changed back into the middle lane in front of HS. Ms. Li then changed into the HOV lane when she was about 1 car length from the intersection and 1 car length in front of Mr. Aujla. Ms. Li then suddenly stopped, and Mr. Aujla ran into her. HS safely proceeded through the intersection as the light turned yellow and went around the block to return to the accident scene. Given that the drivers agree that the accident was in the middle lane, I find that HS's statement that the accident was in the HOV lane was incorrect. I return to this issue below.
24. HS also made a statement to an ICBC adjuster on July 23, 2020. According to ICBC's internal notes, this statement is quite different from his written statement. In particular, in this statement, HS correctly said that the accident was in the middle lane. HS's recollection of how Ms. Li moved through traffic was also different. In the initial statement, HS said that they were in the left lane and Ms. Li was behind them. HS said that the light turned yellow as HS proceeded through the intersection with St. Catherines. HS said that they looked in their rear view mirror and saw Ms. Li's car change into the middle lane and stop right away. Then Mr. Aujla hit Ms. Li from behind. HS said that they were looking in their rear view mirror because Ms. Li had been driving "roughly" earlier.
25. So, the drivers provide vastly different accounts of what happened. HS's written statement is more consistent with Mr. Aujla's account than Ms. Li's account, although there are some key inconsistencies that I address below. 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, whether their evidence is consistent with objective evidence, and whether their account has changed over time. I also must 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, as this one was. This means that even an honest witness's memories about what happened can easily be wrong. I may accept some, all, or none of a witness's evidence. See *Rattu (Litigation Guardian of) v. Biln*, 2021 BCSC 208, at paragraphs 27 to 29.

26. Ms. Li says that Mr. Aujla's evidence is unreliable, pointing to what she says are uncertain statements in his evidence. I do not agree with this characterization of Mr. Aujla's evidence. Unlike Ms. Li's evidence, which is a signed statement, Mr. Aujla's evidence is a transcript of an interview with an independent adjuster. I find that the language Mr. Aujla uses is conversational, but not "uncertain". For example, Ms. Li says that Mr. Aujla was unsure about when Ms. Li changed lanes. She says this because Mr. Aujla said that she was "maybe about 2 car lengths maybe" and "like 2 car lengths I would say" in front of him. I find that his use of "maybe" and "I would say" indicates that he was estimating the distance, not that he was unsure. Ms. Li points to other examples of uncertainty but I find that the same reasoning applies.
27. Mr. Aujla makes similar arguments about minor ambiguities in Ms. Li's evidence. For example, he points to the fact that she did not say precisely how long she had been in the middle lane. As mentioned above, I find that from context that her evidence is clear that she was in the middle lane for at least several blocks before the accident.
28. Overall, I find that both drivers' evidence is reasonably clear. I also find that there is nothing inherently implausible or unreasonable about either party's account of what happened. They both gave earlier statements to ICBC, which are in evidence, and I find that they have both been reasonably consistent over time.
29. Ms. Li says that the vehicle damage is more consistent with her account than Mr. Aujla's because the damage was in the centre of both vehicles' bumpers. I disagree. Mr. Aujla says that Ms. Li changed lanes and then braked hard, and that he skidded

nearly to a stop from around 40 to 50 km/h. This suggests that Ms. Li had time to straighten out in her lane before the impact. I find the physical damage inconclusive.

30. I find that there are 2 issues that weigh in Mr. Aujla's favour: Ms. Li's failure to provide dashcam footage of the accident and HS's evidence.
31. With respect to the dashcam footage, Ms. Li spoke to an ICBC adjuster on July 27, 2020. According to ICBC's notes of that conversation, she told ICBC that she had a dashcam and would need her spouse to retrieve the footage. However, when she next spoke to ICBC on August 11, 2020, she declined to provide it. Ms. Li does not dispute the accuracy of these ICBC notes, so I find that they accurately reflect what she said.
32. Given that the parties' accounts are so different, I find that dashcam footage from Ms. Li's vehicle would have provided highly persuasive, if not conclusive, evidence about whose account of the accident is correct. The respondents raised in their Dispute Responses and submissions that Ms. Li had not provided ICBC with her dashcam footage. In a statement of facts prepared during this dispute, Ms. Li disagreed with the statement "the Applicant has dashcam footage of the accident". Other than that, she says nothing about dashcam footage, either in her written statement or her submissions.
33. The CRT may draw an adverse inference against a party for failing to provide relevant evidence in their possession. The CRT may also draw an adverse inference against a party for intentionally destroying relevant evidence for the purposes of hiding the truth. This legal doctrine is called "spoliation". See *GEA Refrigeration Canada Inc. v. Chang*, 2020 BCCA 361, at paragraph 91.
34. I find the absence of dashcam footage to be highly suspicious. Ms. Li's refusal to provide the dashcam footage to ICBC in August 2020 implies that she had the footage at that time. I find that if there was an innocent explanation for not providing the dashcam footage at that time, such as accidentally destroying it or being unable to download it from the dashcam, she likely would have said so because the ICBC

adjuster told her that without it, ICBC would conclude that she was fully at fault. I find that she also would have said something about the lack of dashcam footage in her statement or submissions for this dispute, given that the respondents raised the issue at the outset.

35. Based on her communications with ICBC in 2020, I find that Ms. Li had dashcam footage of the accident. I find it more likely than not that there is a non-innocent explanation for its absence in this dispute, either because she destroyed it or failed to provide it. I find that an adverse inference is appropriate. I find that if the dashcam footage supported Ms. Li's account of what happened, she would have provided it.
36. As for HS's evidence, Ms. Li argues that HS's statement should be given little or no weight. This is because HS insisted that the accident happened in the HOV lane, which the parties agree is incorrect. Also, HS's 2 statements gave significantly different descriptions of what happened before the collision.
37. I do not agree that HS's evidence should be given no weight at all. As the court noted in *Cue*, the failure to get a detail wrong does not necessarily disqualify a witness's evidence as a whole. In that case, the independent witness insisted that the accident happened in daylight when it was, in fact, already dark out. The court said that the detail most likely to stick in a witness's memory is the most important one: how the accident happened. I find the same reasoning applicable here. While the 2 statements were different in some key respects, the most important detail was consistent. In both statements, HS said that Ms. Li changed lanes from left to right, directly in front of Mr. Aujla and just before the intersection, and then braked suddenly.
38. Ms. Li also argues that HS may not have seen the accident at all. She says that HS's statement is unclear on this point. I disagree. I find that HS clearly says in both statements that Mr. Aujla hit Ms. Li. I also find that HS's decision to return to the accident site to give their contact information suggests that they saw what happened.
39. I therefore accept HS's evidence about what happened immediately before and during the accident even though in their written statement they incorrectly said it was

in the HOV lane. I find that HS saw Ms. Li change lanes in front of Mr. Aujla just before the intersection, leaving little space between their vehicles. I find that HS saw Ms. Li almost immediately brake and saw Mr. Aujla hit her from behind. This is consistent with Mr. Aujla's evidence.

40. Therefore, I find that the weight of the evidence supports Mr. Aujla's account of the accident. I find that Ms. Li changed lanes 1 to 2 car lengths in front of Mr. Aujla and almost immediately stopped. I find that she breached section 151(a) of the MVA by doing so. I find that Mr. Aujla had no opportunity to slow down or create a safe space between him and Ms. Li. In that context, I find that it was not safe for Ms. Li to stop at the yellow light. Rather, I find that Ms. Li was too close to the intersection to stop safely when the light turned yellow, contrary to section 128(1) of the MVA. On this point, I rely on Mr. Aujla's evidence that she came to a stop in the crosswalk and was therefore well past the stop line. I find that Ms. Li's lane change and stop both fell below the standard of care of a reasonably prudent driver.
41. As for Mr. Aujla, Ms. Li argues that he was a commercial driver and therefore had a "higher duty" to be aware of the rules of the road. I find that Ms. Li's actions left Mr. Aujla with no opportunity to slow down or avoid the accident. I find that his status as a commercial driver makes no difference to my conclusion. I find that Mr. Aujla did nothing wrong. I find that Ms. Li was fully responsible for the accident.
42. For these reasons, I dismiss Ms. Li's claims. Given my conclusion, I find that I do not need to address the parties' arguments about future care costs or special damages.

FEES AND EXPENSES

43. 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. Ms. Li was unsuccessful, so I dismiss her claims for CRT fees and dispute-related expenses, including her claim for reimbursement of legal fees. I order Ms. Li to pay the respondents \$25 for their CRT fees.

ORDERS

44. Within 30 days of the date of this decision, I order Ms. Li to pay the respondents \$25 for CRT fees.
45. The respondents also entitled to post-judgment interest under the *Court Order Interest Act*.
46. 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