



Civil Resolution Tribunal

Original Date Issued: November 3, 2021

Amended Date Issued: November 5, 2021

File: VI-2021-000169

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Olsen v. Steffan*, 2021 BCCRT 1162

B E T W E E N :

ANNETTE OLSEN

APPLICANT

A N D :

RENITA MAE STEFFAN and JOSEPH ANTHONY STEFFAN

RESPONDENTS

A N D :

INSURANCE CORPORATION OF BRITISH COLIMBIA

RESPONDENT BY THIRD PARTY NOTICE

AMENDED REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on September 26, 2019, in Victoria, BC. The applicant Annette Olsen collided with a vehicle driven by the respondent Joseph Anthony Steffan (Steffan)ⁱ and owned by the respondent Renita Mae Steffan.
2. It is undisputed that Steffan and Ms. Olsen collided as Steffan changed from the left lane to the right lane in front of Ms. Olsen on Gorge Road. Ms. Olsen was already in the right lane. Ms. Olsen says that Steffan was fully responsible for the accident because they changed lanes directly into her vehicle. ICBC says that Ms. Olsen was fully responsible because she should have yielded to Steffan.
3. Steffan did not file a Dispute Response being served, although they did provide evidence as set out below. ICBC alleges that they did not hold a valid driver's license at the time of the accident and so were in breach of the *Insurance (Vehicle) Regulation*. ICBC was added as a third party under section 77(3) of the *Insurance (Vehicle) Act* (IVA) so that it could dispute liability. The issue of whether Steffan breached their insurance is not before me.ⁱⁱ
4. The parties agree that Ms. Olsen is entitled to \$4,000 in non-pecuniary (pain and suffering) damages and \$300 for the deductible she paid to repair her vehicle, subject to my liability determination.
5. The applicant is self-represented. Ms. Steffan and ICBC 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. Olsen with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Ms. Olsen whether she wanted to continue with the CRT dispute or file a court proceeding instead. Ms. Olsen 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.
12. As noted above, Steffan did not file a Dispute Response, contrary to the CRTA and the CRT's rules. Given that they gave evidence and that ICBC contested Steffan's liability and Ms. Olsen's damages as a third party, I find that it would not be appropriate to find Steffan in default under the CRT's rules.

ISSUE

13. The only issue in this dispute is who is liable for the accident.

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Ms. Olsen as the applicant must prove her case 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.
15. The following facts are undisputed. The accident occurred on Gorge Road just before Dunedin Street in Victoria on September 26, 2019, at around 8:40 am. It was stop and go rush-hour traffic. Gorge Road has 2 lanes in each direction. The parties were both driving east. Ms. Olsen was in the right lane. The collision occurred while Steffan was changing from the left lane into the right lane. Steffan's right turn signal was on.
16. The parties' accounts of the accident are somewhat similar. Ms. Olsen says that she was driving to work and was planning on turning right on Dunedin. She says that she was fully established in the right lane when Steffan turned their signal on to indicate that they wanted to change into her lane. She said that traffic slowed for a red light but there was no room for Steffan to enter the right lane, so she assumed they would not try. As traffic started moving again, Ms. Olsen says that she was focussed on her upcoming right turn when Steffan entered her lane and caused the accident.

17. Steffan was interviewed about the accident on May 14, 2021. The transcript of that interview is in evidence, but it is heavily redacted for reasons that are not clear. In any event, Steffan said that they had turned left out of a parking lot and into the left lane on Gorge Road. Steffan said that traffic stopped and there was 4 feet in between Ms. Olsen and the car ahead of her, so Steffan started to inch into the right lane. Steffan continued to inch into the right lane when traffic started slowly moving, but Ms. Olsen did not let Steffan in, and they collided. Steffan said that they were stopped when Ms. Olsen drove into them.
18. Ms. Olsen provided dashcam footage of the accident. Because Ms. Olsen was behind Steffan in the lead up to the collision, and because the collision took place at a very low speed, the footage provides a clear view of what happened. It shows Ms. Olsen driving in the right lane and Steffan turning left off a side street into the left lane. Steffan almost immediately slows to a stop and puts on their right turn signal. At this point, Steffan is several car lengths ahead of Ms. Olsen. As Ms. Olsen approaches where Steffan is waiting, traffic slows and stops. As traffic starts to move again, a gap forms in front of Ms. Olsen because the vehicle ahead of her accelerates faster than she does. Steffan starts to nose into this gap while Ms. Olsen continues to creep forward. As Steffan's car enters the right lane, both cars briefly stop. At this point, the front of Steffan's car is in the right lane. Then, they both start moving very slowly forward, with Steffan getting further into the right lane and Ms. Olsen getting closer to him, until the front left of Ms. Olsen's car collides with the right side of Steffan's car. Then, both parties drove ahead and turned into a parking lot. Their interaction is not filmed.
19. I turn then to 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). Relevant to this dispute, 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 another vehicle's travel.

20. Ms. Olsen argues that she was dominant in the right lane and she did not expect Steffan to try to squeeze in because there was not enough room to do so. She says that Steffan's decision to try to push their way into the lane caused the accident.
21. Ms. Olsen also says that Steffan left the parking lot without providing their information. She suggests that this was guilty behaviour and that Steffan knew they were at fault. I find that if Steffan had wanted to flee the accident scene, they would not have pulled into a parking lot with Ms. Olsen in the first place. I find that Steffan's post-accident behaviour is therefore not relevant to the question of fault.
22. Ms. Olsen also argues that the fact that Steffan does not have a driver's license suggests that they are not capable of safe driving. I find that the lack of a driver's license is not relevant to determining fault.
23. That said, I agree that Steffan breached section 151(a) of the MVA by changing lanes when doing so affected Ms. Olsen. I find that Steffan's decision to inch into Ms. Olsen's lane affected traffic because it prevented Ms. Olsen from moving forward when she had the right of way. Based on the interview transcript, I find that Steffan changed lanes on the assumption that Ms. Olsen would stop and let them in as a courtesy. As is obvious from the dashcam footage described above, she did not.
24. This does not end the matter. In general, drivers are entitled to assume that other drivers will obey the rules of the road. However, drivers are not entitled to proceed blindly when another driver breaks these rules. They still must take reasonable care to avoid an accident if they can. See *Pirie v. Skantz*, 2016 BCCA 70.
25. This means that even though Steffan broke the rules of the road by starting to nose into Ms. Olsen's lane, Ms. Olsen still had to take reasonable steps to avoid hitting Steffan if she could. I find that Ms. Olsen easily could have avoided the accident by simply allowing Steffan to complete their lane change. Instead, Ms. Olsen continued to drive forward. I find that when Ms. Olsen started inching forward after Steffan had started their lane change, Steffan was far enough into the right lane that they would have had to reverse to get out of Ms. Olsen's way. I find that this would have been

unsafe. I also find that there was no room for Ms. Olsen to go around Steffan. I find that Ms. Olsen continued to inch forward towards an obvious hazard, even after it should have been clear that Steffan had nowhere else to go other than further into the right lane in front of her. I find that Ms. Olsen's behaviour fell below the standard of a reasonably prudent driver.

26. I therefore find that both drivers were negligent. When 2 or more people are negligent, fault must be apportioned based on their relative moral blameworthiness for the accident. I find that the circumstances of this dispute are somewhat similar to *Fraser v. Konnert*, 2012 BCPC 24. In that case, the parties were on a road where 2 lanes merged into 1 lane. One driver was determined to merge because they thought it was their turn as a matter of courtesy. The other driver was equally determined not to let the first driver in. The court apportioned liability equally.
27. This dispute is similar in the sense that both drivers stubbornly insisted on taking the right lane and neither would yield to the other. However, I find that there is a key difference here. In *Fraser*, the court appears to have concluded that either of the drivers could have prevented the collision up to the last second by deferring to the other. In this dispute, I find that Steffan was far enough into Ms. Olsen's lane that in the 2 to 3 seconds before the accident, Ms. Olsen was the only one who could have reasonably prevented the accident. If Steffan had stopped, they would have blocked both lanes with nowhere to go.
28. In summary, Steffan mistakenly believed that Ms. Olsen would extend a courtesy that she did not extend. Steffan should not have started the lane change, but once committed it, they had no reasonable choice but to continue. Ms. Olsen drove slowly and directly into Steffan's vehicle when it was there to be seen. I find that Ms. Olsen's blameworthiness is considerably higher than Steffan's.
29. I find that Steffan is 20% liable and Ms. Olsen is 80% liable for the accident. This means that Ms. Olsen is entitled to 20% of her agreed damages, which equals \$800 in non-pecuniary damages and \$60 for her deductible, for a total of \$860.ⁱⁱⁱ As noted above, ICBC participated as a third party based on its statutory right to do so in

disputes where an insured's coverage is in dispute. This means that no party made a claim against ICBC, so I make no order involving ICBC. I order Ms. Steffan and Steffan to pay the awarded damages.

FEES, EXPENSES, AND INTEREST

30. Section 2 of the *Court Order Interest Act* (COIA) says that pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury. So, I find that Ms. Olsen is entitled to prejudgment interest only on the deductible. It is undisputed that Ms. Olsen had her vehicle repaired but there is no evidence of when, so I find it reasonable to award interest from January 7, 2021, the day Ms. Olsen filed her original Dispute Notice, to the date of this decision. This equals \$0.22.
31. 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. The parties were partially successful. I find that they are each entitled to half of their CRT fees. Ms. Olsen paid \$175, half of which is \$87.50. The respondents paid \$50, half of which is \$25. The net result is that Ms. Olsen is entitled to reimbursement of \$62.50 for CRT fees.^{iv} No party claimed any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order Ms. Steffan and Steffan to pay Ms. Olsen a total of \$922.72, broken down as follows:
- a. \$860 in damages,
 - b. \$0.22 in prejudgment interest under the COIA, and
 - c. \$62.50 in CRT fees.^v
33. Ms. Olsen is also entitled to post-judgment interest under the *Court Order Interest Act*.

34. 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 Because Joseph Anthony Steffan did not participate in this dispute, they did not have the opportunity to identify their pronouns or title, so intending no disrespect I will refer to them by their last name and use gender neutral they/them pronouns.

ⁱⁱ Amended pursuant to section 64(1) to correct a typographical error.

ⁱⁱⁱ Amended pursuant to section 64(3) to correct an arithmetical error.

^{iv} Amended pursuant to section 64(3) to correct an arithmetical error.

^v Amended pursuant to section 64(3) to correct an arithmetical error.