



Civil Resolution Tribunal

Date Issued: November 8, 2021

File: VI-2020-009864

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Louie v. Crighton*, 2021 BCCRT 1180

BETWEEN:

JONATHAN LOUIE

APPLICANT

AND:

TEAN CRIGHTON

RESPONDENT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT BY THIRD PARTY NOTICE

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 28, 2020, in Penticton, BC. The applicant, Jonathan Louie, was driving north on Main Street, intending to turn left onto Calgary Avenue. The respondent, Tean Crighton, was driving south on Main Street.¹ The parties collided as Mr. Louie turned left in front of Crighton, who was driving straight through the intersection.
2. Crighton did not file a Dispute Response despite being served, although they did provide evidence as set out below. ICBC alleges that Crighton did not hold a valid driver's license at the time of the accident and so was 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 Crighton breached their insurance is not before me.
3. Mr. Louie alleges that Crighton had their left signal on but changed their mind at the last second and drove into the intersection as Mr. Louie was turning left. ICBC admits that Crighton's left signal was on and that Crighton is partially at fault for the accident. However, ICBC says that Mr. Louie still should have yielded the right of way. ICBC says that Mr. Louie was 75% and Crighton was 25% at fault. Mr. Louie says that the accident was entirely Crighton's fault.
4. The parties agree that Mr. Louie's non-pecuniary (pain and suffering) damages are \$5,627, the maximum amount for "minor injuries" as defined by the IVA at the time of the accident. Mr. Louie does not claim any other damages.
5. Mr. Louie is self-represented. ICBC is represented by an 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 Mr. Louie with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked him whether he wanted to continue with the CRT dispute or file a court proceeding instead. Mr. Louie 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. 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.

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, Crighton did not file a Dispute Response, contrary to the CRTA and the CRT's rules. Crighton is therefore in default. Under CRT rule 4.3, the CRT may assume that a respondent in default is liable. Given that ICBC contested Crighton's liability under section 77 of the IVA, I find that it would be inappropriate to assume that Crighton was liable for the accident based on his default status.

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, Mr. Louie as the applicant must prove his 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. As mentioned above, the accident occurred on Main Street, which runs north-south, on October 28, 2020. It was a sunny afternoon. At the intersection in question, Calgary Avenue runs west and Bennett Avenue runs east. At this part of Main Street, there are 2 lanes in each direction and no dedicated turn lanes. Calgary Avenue and Bennett Avenue both have 1 lane in each direction. The intersection is controlled by a traffic light with no advanced left turn. The parties collided in the intersection as Mr. Louie turned left in front of Crighton, who was proceeding straight through. The front corner of Crighton's vehicle collided with the middle of the front passenger door of Mr. Louie's vehicle. These facts are undisputed.
16. Mr. Louie gives the following account of the accident. As he approached the intersection, the light had just turned green. He had his left turn signal on and stopped

to wait for an opportunity to turn left onto Calgary Avenue. Crighton was stopped at the intersection with their left signal on and appeared to be turning left. When the other southbound lane cleared, Mr. Louie started his left turn, assuming that Crighton would also turn left. However, Crighton did not turn left and drove straight into the side of Mr. Louie's vehicle.

17. Crighton provided ICBC with a signed statement dated January 30, 2021. He said the following. They were going to work, taking the same route they always take. They always go down Main Street and never turn left on Bennett Avenue. The light was green "the whole time" as they approached the intersection. They did not have their left turn signal on at any point. As they entered the intersection, Mr. Louie suddenly turned left in front of them, and they had no time to react.
18. An independent witness, AA, also provided ICBC with a signed statement, dated January 27, 2021. In that statement, AA says the following. AA was stopped at a red light behind Mr. Louie in the left lane of Main Street at the intersection. Mr. Louie's left turn signal was on. Crighton approached the intersection from the other direction with their left turn signal on. When the light turned green, Mr. Louie proceeded to turn left, but Crighton went straight through and they collided. AA did not say whether they saw Crighton stop at the intersection.
19. ICBC obtained security footage from a nearby business. The video does not show the accident itself because most of the intersection is out of the frame. The video shows Crighton approaching the intersection. They initially stopped before the intersection, next to another stopped vehicle in the right lane. The other vehicle started driving, and after a pause of around 2 seconds, Crighton started moving too. The left side of Crighton's vehicle is not visible, so the video does not show whether their left signal was on.
20. Despite Crighton's statement to the contrary, ICBC concedes that Crighton's left turn signal was on. I agree that the weight of the evidence supports that conclusion. In particular, AA was in a good position to observe Crighton's car and was firm in their memory about the left turn signal. AA did not know either party. AA also made a

statement to ICBC shortly after the accident and was adamant then that Crighton's left signal was on. I also find that Crighton's evidence is inconsistent with the security footage. In particular, the video shows him slowing to a stop next to a stopped vehicle, which is inconsistent with Crighton's allegation that the light was green "the whole time" as they approached the intersection. I therefore find that Crighton's left signal was on.

21. As a general principle, drivers must pay due care and attention and must reasonably consider other users of the road. This standard of care is informed in large part by the rules of the road found in the *Motor Vehicle Act* (MVA). However, the MVA is not a complete code of how drivers must behave on the road because it cannot anticipate every situation.
22. There is no provision of the MVA that prohibits drivers from turning on their turn signals when they do not intend to turn. However, I find that this is clearly below the standard of a reasonable driver. I find that by signalling left, Crighton created a dangerous situation because other drivers, like Mr. Louie, would reasonably rely on that signal when making decisions. See *Liznick v. Herrett*, 1995 CanLII 2087 (BC CA). I find that Crighton was negligent in driving straight through the intersection with their left signal on. As mentioned above, ICBC agrees with this conclusion.
23. The next question is whether Mr. Louie was also negligent, as ICBC alleges. It is well-established that drivers are entitled to expect other drivers to obey the rules of the road. In other words, drivers do not need to anticipate other drivers' negligent behaviour. However, this right is not absolute, and once it is apparent that another driver is breaking a rule of the road, other drivers must take reasonable steps to avoid an accident if they can. See *Ali v. Fineblit*, 2015 BCSC 1494, at paragraph 20.
24. ICBC relies on section 174 of the MVA, which requires left turning drivers to yield the right of way to approaching traffic that is in the intersection or close enough to be an immediate hazard. ICBC says that Mr. Louie should have yielded to Crighton because Crighton was an immediate hazard. I disagree. Given Crighton's left signal, I find that Mr. Louie was entitled to assume that Crighton was turning left. I find that by signalling

their intention to turn left, Crighton indicated they were not a hazard to Mr. Louie because 2 opposing left turning drivers' paths do not cross. I find that Mr. Louie was entitled to rely on Crighton's signal until it became apparent that Crighton was not actually turning left.

25. So, the question is whether Mr. Louie had a reasonable opportunity to avoid the accident once it became apparent that Crighton was not turning left. I find that he did not. In making this finding, I rely primarily on the security footage, which again shows Crighton coming to a complete stop at the stop line before accelerating into the intersection. I find that this behaviour is consistent both with turning left and driving straight. I therefore find that it would not have been apparent to Mr. Louie that Crighton was driving straight even after Crighton had entered the intersection. Also, while the security footage does not show the impact itself, there is a person in the frame who clearly reacts to the noise from the collision. Based on that reaction, I find that only around 2 seconds passed between Crighton accelerating from their stopped position and colliding with Mr. Louie. In this context, I find that Mr. Louie likely had no reason to doubt that Crighton was not turning left until the last second before the impact. Given that the point of impact was the middle of Mr. Louie's car, I find that he had no reasonable opportunity to avoid the accident.
26. ICBC also relies on *Schafer v. Whiteley*, 2013 BCSC 225. There, a left turning driver was found fully liable for an accident after failing to prove that the straight-through driver had their right signal on. ICBC relies on the defendant's position that the left turning should have been 25% liable if the signal was on. The judge made no comment on the defendant's position, and in any event liability findings are highly fact specific. So, I find *Schafer* is not helpful in deciding liability in this dispute.
27. I also note that Mr. Louie argues that I should consider his clean driving record in assessing fault for this accident. He also alleges that Crighton is notorious in their community for being a reckless driver. I give no weight to these arguments as I find the parties' driving records are irrelevant to the question of fault. See *Kutos v. ICBC*, 2021 BCCRT 1060, at paragraph 21.

28. I therefore find that Crighton was fully at fault for the accident. Mr. Louie is entitled to \$5,627 in non-pecuniary damages. 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 Crighton to pay the awarded damages.

FEES, EXPENSES AND INTEREST

29. Further to section 2 of the *Court Order Interest Act*, prejudgment interest must not be awarded on non-pecuniary damages resulting from personal injury. Because Mr. Louie's sole claim is for non-pecuniary damages, I award no prejudgment interest.

30. 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. Mr. Louie was successful, so I order Crighton to pay him \$175 in CRT fees. Mr. Louie did not claim any dispute-related expenses. I dismiss ICBC's claim for reimbursement of its CRT fees.

ORDERS

31. Within 30 days of the date of this order, I order Crighton to pay Mr. Louie a total of \$5,802, broken down as follows:

a. \$5,627 in damages, and

b. \$175 in CRT fees.

32. Mr. Louie is also entitled to post-judgment interest under the *Court Order Interest Act*.

33. I dismiss ICBC's claim for reimbursement of its CRT fees.

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 Tean Crighton 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.