



Civil Resolution Tribunal

Date Issued: November 18, 2021

File: VI-2020-007693

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Kim v. Nguyen*, 2021 BCCRT 1220

BETWEEN:

YEOKYUNG KIM

APPLICANT

AND:

VIVIAN NGUYEN

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on May 22, 2020, in Vancouver, BC. The applicant, Yeokyung Kim, says that he was injured when a vehicle hit him while he was riding his electric scooter. Mr. Kim says he looked both

ways before entering the road from his driveway, and that the other driver was likely speeding so should be held responsible for accident. Mr. Kim says he was injured in the accident. He claims \$2,000 for pain and suffering damages and \$1,286.88 in property damage for his broken scooter.

2. The respondent, Vivian Nguyen, is the registered owner of the vehicle that hit Mr. Kim. Ms. Nguyen says she was not driving her vehicle at the time of the accident. Ms. Nguyen says she is not the proper respondent in this dispute, and the person driving her vehicle, TL, should have been the named respondent.
3. Ms. Nguyen also says Mr. Kim is fully responsible for the accident because he rode his scooter into the road without thoroughly checking to see if the street was clear. Ms. Nguyen says TL was not speeding and had no opportunity to avoid the collision.
4. Mr. Kim is self-represented. Ms. Nguyen is represented by an employee of her insurer, Insurance Corporation of British Columbia (ICBC).

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* 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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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 Mr. Kim with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Mr. Kim whether he wanted to continue with the CRT dispute or file a court proceeding instead. He 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. 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.
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.
11. I note that Mr. Kim initially also claimed for income loss. However, the parties resolved Mr. Kim's income loss claim during the facilitation phase of this dispute. Therefore, I find Mr. Kim's claim for income loss is not before me.

ISSUES

12. The issues in this dispute are:

- a. Is Ms. Nguyen the proper respondent to this dispute?
- b. Who is responsible for the May 22, 2020 accident?
- c. If Ms. Nguyen is partly or fully responsible, what damages, if any, is Mr. Kim entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil claim such as this, as the applicant, Mr. Kim bears the burden of proof on a balance of probabilities (meaning “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.

Ms. Nguyen as a respondent

14. As noted, Ms. Nguyen was the registered owner of the vehicle involved in the accident. She says TL, as the driver, should be the respondent in this dispute. She relies on the BC Provincial Court’s decision in *Kristen v. ICBC*, 2018 BCPC 106, which held that the proper defendant in an action to determine liability in a motor vehicle accident is the other driver. In *Kristen*, the claimant had named ICBC as the defendant. The court found that it could not assess liability unless the other driver was given an opportunity to present his or her case on that issue.

15. While it may generally be preferable to name the other driver when determining liability, I find nothing turns on Mr. Kim’s failure to name TL as a respondent to this dispute. This is because under section 86 of the *Motor Vehicle Act* (MVA), when a vehicle owner gives their consent for someone else to drive their vehicle, the owner is vicariously liable for any accidents caused by that other driver. It is undisputed that TL was driving Ms. Nguyen’s vehicle with her consent.

16. I also note that in *Megaro v. Vanstone*, 2018 BCSC 1501 (affirmed in 2020 BCCA 273), the Supreme Court of BC found a vehicle owner vicariously liable under MVA section 86 for an accident where the driver was unidentified and did not provide

evidence at trial. Based on *Megaro*, I find Mr. Kim has a valid claim for damages against Ms. Nguyen even though he did not also claim against TL.

17. I find that as the registered owner, Ms. Nguyen is a properly named respondent to this dispute, and if Mr. Kim proves TL is partly or fully responsible for the accident, then Ms. Nguyen must pay Mr. Kim's damages.

Who is responsible for the accident?

18. The circumstances of the accident are not seriously disputed. Ms. Nguyen also provided video from a surveillance camera pointed directly at the accident scene, obtained from Mr. Kim's landlord. The video shows Mr. Kim on an electric scooter, coming from a path beside his house, crossing the sidewalk in front of his house, and travelling down the driveway to McKinnon Street. There was a large white van parked on McKinnon Street to the right of the driveway, with both of its rear doors wide open.
19. Mr. Kim proceeded off the driveway, onto the road, and turned to his right to go around the parked van. Just as he emerged from behind the van into the middle of the road, a red SUV-type vehicle hit Mr. Kim. He rolled up onto the hood and then fell to the ground in front of the vehicle.
20. Mr. Kim says he looked both ways before entering the road. He also submits that he stopped at the end of the driveway before going onto the road. However, I find the video evidence does not support that submission. I find the video shows that Mr. Kim appeared to accelerate as he crossed the sidewalk and proceeded down the driveway. I find he did not stop to look for traffic before entering the road, and that he made a wide right turn to proceed up the middle of the street. I also find the parked van likely obstructed his view of any traffic that might be coming from his right.
21. Overall, I find that Mr. Kim's actions fell below the standard expected of a reasonable and prudent person in the circumstances. I find that Mr. Kim should have taken the time to determine whether there was any traffic coming from his right before he entered the roadway. However, the evidence shows Mr. Kim failed to even slow down

before proceeding out into the middle of the road. I find TL was there to be seen, and she represented an immediate hazard to Mr. Kim as he proceeded blindly around the parked van. I find that Mr. Kim was negligent and that his negligence caused the accident.

22. I turn to whether TL also bears any responsibility for the accident.
23. It is undisputed that the speed limit on the road in front of Mr. Kim's house is 30 kilometres per hour. Mr. Kim argues that TL must have been travelling over the speed limit when the accident happened. He says that is the only explanation for the extent of his injuries and damage to his scooter. However, Mr. Kim provided no evidence to support his allegation of TL's speed. I cannot tell from the video evidence how fast TL was travelling, but there is nothing obvious to suggest TL was driving more than 30 kilometres per hour.
24. I find that assessing a vehicle's speed based on the scooter's damage and Mr. Kim's injuries requires expert evidence because it is outside the common knowledge of an ordinary person (see *Bergen v. Guliker*, 2015 BCCA 283). Mr. Kim provided no such expert evidence. I find his allegation that TL was speeding is unproven.
25. Mr. Kim also argues that TL should have seen him and been able to stop in time. I disagree. I find just as the parked van likely blocked Mr. Kim's view of approaching traffic, it also likely prevented TL from seeing Mr. Kim coming down the driveway. Based on the video evidence, I find TL likely would not have seen Mr. Kim until he emerged from behind the van, at which point he was directly in TL's path and there was nothing she could do to avoid colliding with Mr. Kim.
26. I find that Mr. Kim has not shown TL was negligent or bears any responsibility for the accident. Therefore, I find Ms. Nguyen is not vicariously liable for Mr. Kim's damages. I dismiss Mr. Kim's claims.

FEES AND EXPENSES

27. 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. As Mr. Kim was not successful, I find he is not entitled to reimbursement of his CRT fees. As Ms. Nguyen was the successful party, I find Mr. Kim must reimburse Ms. Nguyen \$25 for her paid CRT fees.

ORDERS

28. Within 30 days of the date of this decision, I order Mr. Kim to pay Ms. Nguyen a total of \$25 in CRT fees.

29. I dismiss Mr. Kim's claims.

30. 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.

Kristin Gardner, Tribunal Member