



Civil Resolution Tribunal

Date Issued: November 24, 2021

File: VI-2021-003342

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Fung v. Rizvi*, 2021 BCCRT 1241

BETWEEN:

KENNY FUNG

APPLICANT

AND:

MOHAMMAD HASAN RIZVI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about accelerated depreciation. The applicant, Kenny Fung, and the respondent, Mohammad Hasan Rizvi,¹ were in a motor vehicle accident that took place on October 5, 2020, in Vancouver, BC. It is undisputed that Rizvi was fully responsible for the accident.

2. Mr. Fung's car, a 2020 Tesla Model 3, required extensive repairs. Mr. Fung says that the accident reduced the Tesla's market value by \$15,000. He claims this amount. Rizvi says that the accident only reduced the Tesla's value by \$8,203.70.
3. The applicant is self-represented. Rizvi is represented by an Insurance Corporation of British Columbia (ICBC) employee.

JURISDICTION AND PROCEDURE

4. 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.
5. 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.
6. 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.
7. 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.

ISSUE

8. The issue in this dispute is how much the Tesla depreciated because of the accident.

BACKGROUND

9. In a civil claim such as this, Mr. Fung 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.
10. As mentioned above, the accident occurred on October 5, 2020, in Vancouver BC. Mr. Fung was driving east on Southwest Marine Drive when Rizvi hit him from a side street. The main point of impact was Mr. Fung's rear passenger door. The damage cost \$26,688.36 to repair. Mr. Fung says that he was injured in the accident but does not claim damages for his injuries in this dispute.
11. The Tesla was the "Standard Plus" version and had 11,385 kilometers at the time of the accident. Mr. Fund does not allege that there were any noticeable visual defects in the Tesla after the repairs.
12. On April 15, 2021, Mr. Fung sold the Tesla for \$34,000 to Nara Auto Sales Ltd., a car dealership. At that point, it had around 14,000 kilometers.

EVIDENCE AND ANALYSIS

13. Accelerated depreciation claims reflect the market reality that a vehicle may be worth less after an accident even if it has been fully repaired because of the "stigma" associated with vehicles that have been in significant accidents. The amount of the claim is the difference in the vehicle's market value before and after an accident. A person claiming accelerated depreciation, like Mr. Fung, must prove that their specific vehicle depreciated and must prove how much. See the discussion in the non-binding CRT decision *Spiridonov v. Anthony*, 2021 BCCRT 150, at paragraphs 18 and 19, which I agree with and adopt.

14. The parties disagree about the Tesla's value both before the accident and after the repairs. With respect to the pre-accident value, Rizvi argues that the pre-accident value was \$50,954.65 while Mr. Fung argues that it was \$48,500.
15. Rizvi relies on a report that Mitchell International prepared for ICBC, on April 13, 2021. There is no indication of the report's author or their qualifications. The report estimated that the Tesla had a pre-accident value of \$50,954.65. The report arrived at its estimate by taking the average of 2 dealership listings for the same year, make and model car, with adjustments for Mr. Fung's Tesla's low kilometers.
16. Mr. Fung relies on a "Used Car Appraisal Report" from a car dealership called Bong's Motors. The report is a single page form that does not say who the author is or how they arrived at their estimate. It is dated September 18, 2020, when the Tesla had 10,520 kilometers. The report valued the Tesla at \$48,500. Bong's Motors also provided an estimate that the Tesla's post-accident value was \$32,000, which is on the same form.
17. I find that the Mitchell report and Bong's Motors reports do not meet the CRT's requirements for expert evidence because they do not include the name of the author or their qualifications. Given that the stated purpose of the Mitchell report is to provide ICBC with a pre-accident vehicle value, I find it more likely than not that a qualified person prepared it. I exercise my discretion under CRT rule 1.2(2) to waive the application of the CRT's rules about the requirements for expert evidence and accept the Mitchell report as expert evidence. I note that because the Mitchell report provides a higher estimate than Bong's Motors' report, Mr. Fung is not prejudiced by my decision to accept the Mitchell report's estimate.
18. As for Bong's Motors 2 reports, Mr. Fung says in his reply submissions that the person who prepared them was Bong's Motors's owner, who had been in the business for over 30 years. Rizvi argues that I should not accept these reports as expert evidence, and I agree. I find that Mr. Fung's unsupported assertions about the author's qualifications are not enough to satisfy me that they are qualified to give an expert opinion about vehicle values. Given that the reports do not include anything about

how Bong's Motors arrived at its estimates, I decline to exercise my discretion under CRT rule 1.2(2) to admit them as expert evidence.

19. On that basis, I find that the Tesla was worth \$50,954.65 before the accident. I turn next to the more contentious issue between the parties, which is the Tesla's market value after the accident.
20. Mr. Fung argues that the best evidence of the Tesla's market value after the accident is the sale price of \$34,000. Rizvi argues that the sale price is not an accurate reflection of the Tesla's market value because a car dealership bought it. Rizvi says that because dealers need to make a profit, they have to pay less than market value.
21. On this point, Mr. Fung relies on *Jiwa v. Xu*, 2019 BCSC 680. In that case, the plaintiff sold a damaged car to a dealership. The court accepted the plaintiff's expert's opinion that the plaintiff would not likely have been able to sell it for more privately given how badly damaged it was. Mr. Fung did not provide any expert evidence that he would not have been able to sell the car privately for more than \$34,000. On the contrary, as discussed below, Mr. Fung's own evidence shows he likely could have received a higher price privately. I therefore agree with Rizvi that the Tesla's actual sale price does not reflect the Tesla's market value.
22. Rizvi provided a Diminished Value Report from DCI Solutions Canada. The valuator, Keith Jones, provided their qualifications in the report. I am satisfied that they are qualified to provide an expert opinion about vehicle values, which Mr. Fung does not dispute. I accept the DCI report as expert evidence under the CRT's rules.
23. The valuator said that whether, or to what extent, an accident affects a vehicle's value depends on several factors, such as the vehicle type, its pre-accident condition, and the nature and extent of the repairs. The valuator did not say how they applied these factors to determine the Tesla's value. The valuator said that the Tesla's post-accident and post-repair value was \$42,750.95. The valuator used Mitchell's pre-accident value of \$50,954.65, for a diminished value of \$8,203.70.

24. Mr. Fung provided other evidence that he says supports his position that the Tesla's post-accident market value was around \$34,000. First, Mr. Fung provided 2 Craigslist ads for used long range Tesla Model 3s, a more expensive model than his Tesla. The first had not been in an accident and was listed for \$64,695. The second had been in an accident that caused around \$16,000 in damage and was listed for \$50,000. He says that the vehicles were otherwise comparable, and that this supports his argument that his Tesla depreciated by about \$15,000. I find that the asking price in private used vehicle ads does not necessarily indicate what those vehicles would sell for, so I place little weight on this evidence.
25. Second, Mr. Fung says that he put his Tesla's information into the Kelly Blue Book online estimator tool, which provided an estimated trade-in value of \$42,360. In contrast, Tesla undisputedly offered him only \$29,000 as a trade-in after the accident. He says that after accounting for the tax break associated with trade-ins, this works out to around a \$15,000 difference in market value. I place little weight on this evidence. Mr. Fung's own calculations say that Tesla's \$29,000 trade-in offer had a cash equivalent of under \$33,000, which I find suggests that these trade-in values are not an accurate indication of the Tesla's actual market value.
26. Finally, Mr. Fung placed an "experimental" ad on Craigslist to gauge the Tesla's market value after he had already sold it. He says that he listed the Tesla for \$41,000 and disclosed that it had been in an accident. The ad itself is not in evidence, but I accept this general description because the responses to the ad implicitly confirm these details. Mr. Fung provided 16 emails he received in response to the ad. In each response, Mr. Fung disclosed what the repairs had cost. The highest offer he received was \$36,500. He also got 3 \$35,000 offers, and several other offers that went as low as \$30,000. Several people also said that they were not interested in a vehicle with such a significant accident history.
27. I place some weight on the responses to Mr. Fung's ad. While I accept that the valuator in the DCI report used accepted methods to estimate the impact of the

accident on the Tesla's market value, it was still an estimate. Mr. Fung's evidence shows how the market actually reacted to the extent of the repairs.

28. Mr. Fung argues that the Tesla's market value is the average of the offers he received, which is \$33,500. I disagree. I find that the market value of a used vehicle is the highest amount someone will pay for it. I therefore find that Mr. Fung's experiment shows that the Tesla was worth at least \$36,500.
29. I find that the Tesla was likely worth more than that. This is because Mr. Fung did not negotiate with most of the people who expressed interest in the Tesla, including those who made opening offers of \$35,000. I find as a matter of common experience that a potential buyer's opening offer will often be less than they are ultimately willing to pay, especially given that several people were interested in the Tesla. Mr. Fung also did not explain why he listed the car for less than what ICBC said it was worth, which may have influenced the offers he received. In other words, because Mr. Fung's ad was not a genuine effort to sell the Tesla for as much as possible, it is unlikely the results show the Tesla's true value. That said, I find that the market's response to Mr. Fung's ad suggests that the market value was considerably lower than the DCI report estimated.
30. Weighing all the evidence, I find that the Tesla was worth \$38,500 after the accident. Subtracting this amount from the Tesla's pre-accident value of \$50,954.65, I find that the accident accelerated the Tesla's depreciation by \$12,454.65. I order Rizvi to pay Mr. Fung this amount.

FEES, EXPENSES, AND INTEREST

31. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Fung is entitled on the accelerated depreciation from April 15, 2021, the day he sold the Tesla, to the date of this decision. This equals \$34.24.
32. 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 each partially successful. I find that they are each entitled to half of their CRT fees. Mr. Fung paid \$175, half of which is \$87.50. Rizvi paid \$25, half of which is \$12.50. The net result is that Mr. Fung is entitled to reimbursement of \$75 for CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Rizvi to pay Mr. Fung a total of \$12,563.89, broken down as follows:
 - a. \$12,454.65 in damages,
 - b. \$34.24 in prejudgment interest under the COIA, and
 - c. \$75 in CRT fees.
34. Mr. Fung is also entitled to post-judgment interest under the COIA.
35. 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, Mohammad Hasan Rizvi is represented by ICBC. ICBC has refused to ask its insureds' pronouns and titles, citing their privacy. I will therefore refer to Mohammad Hasan Rizvi by just their last name throughout this decision and use gender neutral pronouns, intending no disrespect. 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.