



# Civil Resolution Tribunal

Date Issued: December 3, 2021

File: VI-2020-008439

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Nijjar v. Berry*, 2021 BCCRT 1272

**BETWEEN:**

RENU NIJJAR

**APPLICANT**

**AND:**

ALLISON LYNN BERRY

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on September 27, 2019, in Vancouver, BC, between Renu Nijjar and Allison Lynn Berry. Ms. Nijjar was travelling east on East 41<sup>st</sup> Avenue in Vancouver. Ms. Berry was travelling west. Ms. Nijjar struck Ms. Berry as Ms. Berry turned left onto Main Street. The dispute largely turns on what colour the traffic light was when Ms. Nijjar entered the intersection. Ms.

Nijjar says it was green and Ms. Berry says it was red. The parties each say that the other is fully liable for the accident.

2. The parties agree that Ms. Nijjar's damages for pain and suffering are \$5,500, the maximum amount for a "minor injury" as defined by the *Insurance (Vehicle) Act* at the time of the accident. Ms. Nijjar does not claim any other damages.
3. Ms. Nijjar is self-represented. Ms. Berry 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. 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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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.
6. The CRT provided Ms. Nijjar 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. Nijjar chose to continue at the CRT.

7. 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.
8. 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.
9. 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**

10. The issue in this dispute is who was responsible for the accident.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim such as this, Ms. Nijjar as the applicant must prove her claims 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.

12. As mentioned above, the accident occurred on September 27, 2019. It was shortly after noon on a clear day. East 41<sup>st</sup> Avenue has 2 through lanes and a dedicated left turn lane each direction. The intersection between East 41<sup>st</sup> Avenue and Main Street is controlled by a traffic light. Ms. Nijjar was travelling east on East 41<sup>st</sup> Avenue in Vancouver, intending to pass through the intersection with Main Street. Ms. Berry was travelling west, intending to turn south onto Main Street. This is not disputed.
13. The mechanics of the accident are also undisputed. Ms. Nijjar struck Ms. Berry as Ms. Berry turned left from East 41<sup>st</sup> Avenue onto Main Street. Ms. Nijjar's right front bumper struck Ms. Berry's front passenger side door and front fender. I note that the evidence is inconsistent about which through lane Ms. Nijjar was in. I accept Ms. Nijjar's evidence that she was in the left through lane because it is consistent with the photos in evidence, but I find that nothing turns on this detail.
14. I turn first to the applicable law. There are several sections of the *Motor Vehicle Act* (MVA) that are relevant to this dispute. Section 127 of the MVA says that a motorist approaching a green light may proceed through the intersection. Section 129(1) says that a motorist approaching a red light must stop. Section 174 says that a motorist turning left must yield to oncoming traffic that is either in the intersection or so close to the intersection that it is an immediate hazard.
15. Liability for left-turn accidents like this one depends in large part on the colour of the traffic light when the straight-through driver enters the intersection, because this determines who had the right of way. See *Lozinski v. Maple Ridge (District)*, 2015 BCSC 1277, at paragraph 70. The driver with the right of way is generally entitled to assume that others will follow the rules of the road. That said, a driver with the right of way must still act reasonably to avoid hazards.
16. In addition to the parties, there are 4 independent witnesses who provided statements either to an independent adjuster or to ICBC: JG, NN, MT, and CL. Between these 6 people, there are contradictory accounts of what colour the light was. I must weigh this evidence. In left-turn cases like this, it is unsurprising that different witnesses have different memories of what happened. The relevant details occur quickly and

over a matter of just a few seconds. In general, I accept that most witnesses and parties do their best to accurately describe what they remember seeing. However, even an honest witness's memories can easily be wrong. With that in mind, I must consider each person's ability to observe what happened, whether their evidence seems unreasonable, impossible, or unlikely, and whether their evidence is consistent with common human experience. See *Rattu (Litigation Guardian of) v. Biln*, 2021 BCSC 208, at paragraphs 27 to 29.

17. Ms. Nijjar gives the following account. She was travelling between 50 and 55 km/h as she approached Main Street. The light was green when she entered the intersection. Ms. Berry then turned left directly in front of her. Ms. Nijjar slammed on her brakes but could not avoid the accident. The light turned yellow just as the accident happened. Ms. Berry does not make any arguments about why I should not accept Ms. Nijjar's evidence. I find that there is nothing inherently implausible or unbelievable about Ms. Nijjar's account.
18. An independent adjuster interviewed Ms. Berry on January 22, 2021, and the transcript is in evidence. I find from context that Ms. Berry adopts that transcript as her evidence in this dispute. The relevant portions are as follows. Ms. Berry entered the intersection on a green light in the left turn lane and stopped. When the light turned yellow, she saw that Ms. Nijjar's car was more than half a block away and may have been a full block away. She thought she had "more than enough time" to turn. When she started turning, the light was still yellow. At this point, she saw Ms. Nijjar speed up to "well over 50". Then Ms. Nijjar struck the right side of Ms. Berry's car. She did not know what colour the light was at the time of impact but "guessed" that it was red.
19. It is difficult to reconcile the fact that Ms. Berry argues that Ms. Nijjar ran a red light when her own evidence contradicts this. In effect, she asks me to disregard her evidence about the light and accept JG's evidence instead, which as discussed below is more favourable to her case. I find that this undermines the credibility of her evidence about the traffic light.

20. JG was a city bus driver on a practice route with several colleagues. JG provided a signed statement dated February 1, 2021, in which they said the following. They were stopped facing north on Main Street waiting to turn right onto East 41<sup>st</sup> Avenue. Their light was red. The light on East 41<sup>st</sup> Avenue turned yellow while Ms. Berry was in the intersection waiting to turn. It turned red as she started to make her left turn. Ms. Nijjar entered the intersection on a red light and did not slow down before entering the intersection. Rather, she sped up. JG estimated that she was going 60 km/h.
21. Ms. Nijjar says that JG's account has been inconsistent over time. She says that at the accident scene, one of JG's colleagues told Ms. Nijjar that they thought that Ms. Nijjar was attempting to turn, which was not accurate. Ms. Nijjar notes that NN said that she stayed at the accident scene because she thought that the bus drivers had seen the accident wrong. I note that JG's signed statement is consistent with the telephone statement they gave ICBC on November 5, 2019, which was just over a month after the accident. So, while there may have been some confusion at the accident scene, I do not agree that these 2 statements undermine the credibility or reliability of JG's evidence.
22. For her part, Ms. Berry argues that I should accept JG's evidence because he was in a perfect position to observe the lead up to the accident. I agree that JG had a good reason to be watching eastbound traffic on East 41<sup>st</sup> Avenue as he waited to turn right. With that, I find that JG was well placed to observe the colour of East 41<sup>st</sup> Avenue's traffic light and Ms. Nijjar's behaviour before she entered the intersection. I find that his observations of the accident are therefore entitled to weight.
23. NN provided a verbal statement to an independent adjuster on January 22, 2021, and later confirmed the accuracy of the adjuster's summary of that conversation via email. They said that they were waiting at the red light facing south on Main Street, so the accident happened right in front of them. However, they did not observe the colour of the light. NN did say that they may have been getting ready to take their foot off the brake. Ms. Berry argues that this suggests that the light was red before the accident happened. I do not accept NN's evidence about whether they were about to take their

foot off the brake because it is inconsistent with their more specific statement that they did not see what colour the light was. Overall, I find NN's evidence unhelpful in determining the central issue of the light's colour.

24. MT provided a verbal statement to an independent adjuster on January 21, 2021, and later confirmed the accuracy of the adjuster's summary of that conversation via email. MT gave the following account. MT was walking across Main Street from the southwest to southeast corner. As they walked across the street, the East 41<sup>st</sup> Avenue light was green. The light turned yellow just as MT stepped onto the sidewalk. About a second later, MT heard the collision behind them. They did not observe the colour of the light after the collision as their focus was on the aftermath of the accident.
25. Like JG, MT had good reason to be paying close attention to the East 41<sup>st</sup> Avenue light. MT was a pedestrian crossing a busy street, so I find that it is reasonable that they would be aware of when the light changed yellow. Ms. Berry argues that I should not accept MT's statement that the collision happened a second after the light turned yellow because MT had no reason to count the seconds. While that may be so, I consider this statement to be an estimate, and an indication that the accident happened very shortly after the light turned yellow. I note that in their initial statement to ICBC, MT said that the crash and light turning yellow happened at the same time. I accept MT's evidence that the accident happened almost immediately after the light turned yellow. Given where the accident happened in the intersection, I find that this would mean that Ms. Nijjar entered the intersection on a green light.
26. CL was a taxi driver who was stopped at a gas station at the southeast corner of the intersection. They gave a telephone statement to ICBC. I accept the ICBC notes of that conversation because they are in the first person and indicate that the ICBC employee read the notes back to CL to confirm their accuracy. CL said that they saw the accident as they walked back to their car. They said that Ms. Nijjar entered the intersection on a green light and Ms. Berry turned left in front of her as it turned yellow.
27. Ms. Berry argues that CL's evidence should be given no weight. CL said that Ms. Berry had a dog on her lap, which Ms. Berry says is untrue. More importantly, she

says that it is not something that CL could possibly have seen from their vantage point at the gas station. Ms. Berry also points out that CL got the colours of the 2 vehicles mixed up. While I agree that CL's statement that Ms. Berry had a dog on her lap was an assumption, I do not agree that this undermines his key observation about the colour of the light. I say the same thing about CL mixing up the vehicles' colours. While CL's statement lacks detail in some respects, I give it some weight.

28. So, there are 5 accounts of what colour the light was when Ms. Nijjar entered the intersection. Ms. Nijjar, MT, and CL all say that it was green. Ms. Berry says it was yellow. Only JG says that the light was red.
29. With these conflicting accounts, it is impossible to know with certainty what happened. Overall, I find it unlikely that Ms. Nijjar, MT, and CL would give such similar accounts of what happened, and all be wrong. So, while I find that there is no reason in the evidence to doubt JG's sincerity, I find that he was likely mistaken about what colour the light was when Ms. Nijjar entered the intersection.
30. Therefore, I find that Ms. Nijjar entered the intersection on a green light. I find that she therefore had the right of way. I find that Ms. Berry breached section 174 of the MVA by attempting a turn when Ms. Nijjar was an immediate hazard. I rely, in particular, on Ms. Berry's admission that she had seen Ms. Nijjar from at least half a block away. I find that Ms. Berry should have reasonably observed Ms. Nijjar approaching the intersection and seen that she was not slowing down or stopping. I find that Ms. Berry's decision to turn left in front of Ms. Nijjar fell below the standard of a reasonable driver.
31. This does not necessarily end the matter. As mentioned above, drivers must react reasonably to hazards even if they have the right of way. This means that Ms. Nijjar would also be negligent if she could have avoided the accident by exercising reasonable care and diligence. However, I find that none of the parties' or witnesses' accounts of what happened suggest that Ms. Nijjar had any opportunity to avoid the accident once Ms. Berry started her turn.



32. As for the allegation that Ms. Nijjar was speeding, she admits that she may have been going slightly over the speed limit. There is no evidence that she was going more than 60 km/h. As a matter of common sense, I find that her speed was not a cause of the accident because Ms. Berry turned directly in front of Ms. Nijjar, so it would not have made any difference if Ms. Nijjar had been driving slightly slower.
33. I therefore find that Ms. Berry was fully at fault for the accident. Based on the agreement between the parties, I order Ms. Berry to pay Ms. Nijjar \$5,500 in non-pecuniary damages.

### **FEES, EXPENSES, AND INTEREST**

34. Under section 2 of the *Court Order Interest Act* (COIA), prejudgment interest must not be awarded on non-pecuniary damages resulting from personal injury, so I make no order for prejudgment interest.
35. 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. I therefore order Ms. Berry to reimburse Ms. Nijjar her \$175 in CRT fees. I dismiss Ms. Berry's claim for reimbursement of her CRT fees.

### **ORDERS**

36. Within 30 days of the date of this order, I order Ms. Berry to pay Ms. Nijjar a total of \$5,675, broken down as follows:
- a. \$5,500 in damages, and
  - b. \$175 in CRT fees.
37. Ms. Nijjar is entitled to post-judgment interest under the COIA.
38. I dismiss Ms. Berry's claim for reimbursement of her CRT fees.

39. 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.

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Eric Regehr, Tribunal Member