



Civil Resolution Tribunal

Date Issued: February 16, 2022

File: VI-2021-000333

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Schnipper v. Nadeau*, 2022 BCCRT 173

B E T W E E N :

FREDDY SCHNIPPER

APPLICANT

A N D :

NELSON NADEAU and KOLE BAKER

RESPONDENTS

A N D :

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 August 22, 2020, on a logging road near Jordan River, BC. The applicant, Freddy Schnipper, was driving his 2019 Chevrolet Colorado. The respondent, Nelson Nadeau, was driving a 1995 Jeep Cherokee that was owned by the other respondent, Kole Baker. The collision happened as the parties went opposite directions around a bend in the road. Mr. Schnipper says that Mr. Nadeau was entirely at fault for the accident because Mr. Nadeau failed to navigate the bend and skidded into the side of Mr. Schnipper's truck.
2. Neither respondent filed a Dispute Response despite being served. Their insurer, the Insurance Corporation of British Columbia (ICBC), alleges that the respondents breached their insurance under section 55 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 either of the respondents breached their insurance is not before me.
3. Mr. Nadeau said in his statements to ICBC that the road was too narrow for the vehicles to pass each other. He denied crossing into Mr. Schnipper's side of the road. ICBC internally split liability equally between the parties because it was unable to determine whose account was accurate. In this dispute, ICBC says that Mr. Schnipper has not proven that the accident was Mr. Nadeau's fault. So, ICBC asks me to dismiss Mr. Schnipper's claims.
4. Mr. Schnipper and ICBC agree that Mr. Schnipper's damages are \$5,500 for non-pecuniary (pain and suffering) and \$3,970 for accelerated depreciation.
5. Mr. Schnipper is represented by an articling student, Jackson Bocksnick. 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* (ACR) 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. Schnipper 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. Schnipper 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. Neither party

requested an oral hearing. 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, the respondents did not file a Dispute Response, contrary to the CRTA and the CRT's rules. They are therefore in default. Under CRT rule 4.3, the CRT may assume that a respondent in default is liable. Given that ICBC contested liability on the respondents' behalf, I find that it would be inappropriate to assume that they are liable based on their default status.

ISSUE

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

EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Mr. Schnipper as the applicant must prove his case 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.
15. The following facts are undisputed. The accident happened on a bend in a logging road near Jordan River, BC, on August 22, 2020. Both parties were in the area camping with friends. Mr. Nadeau was driving alone back to his campsite in Mr. Baker's jeep. Mr. Schnipper was alone in his truck with 2 vehicles following him heading to a different campsite. The parties did not know each other and were not part of the same group. It was around 11:00 am and the weather was sunny.

According to the accident scene photos, it was a typical logging road with hard packed dirt and gravel, and a small shoulder that was at some points overgrown.

16. The parties were travelling opposite directions. From Mr. Schnipper's direction, the road curved left and from Mr. Nadeau's direction, it curved right. So, Mr. Schnipper was on the outside curve and Mr. Nadeau was on the inside curve. The front right corner of Mr. Nadeau's Jeep hit the side of Mr. Schnipper's truck, just in front of the left rear wheel.
17. Again, none of the above is disputed. However, the parties have different accounts of how the accident happened. There is no dashcam footage of the accident. There are 3 witness statements, which I discuss below.
18. Mr. Schnipper says that he was driving 20 to 30 km/h. He says that as he rounded the corner, he saw Mr. Nadeau travelling at an "unsafe speed" towards him. He says that Mr. Nadeau slammed on his brakes and slid into Mr. Schnipper's truck. Mr. Schnipper says that he remained on his side of the road.
19. Mr. Schnipper says that after the accident, Mr. Nadeau apologized, admitted that the accident was his fault, and offered to pay for the damage. Mr. Schnipper also says that Mr. Nadeau repeatedly asked him not to report the accident to ICBC. Mr. Schnipper provided August 24, 2020 text messages between him and Mr. Nadeau where Mr. Nadeau tells Mr. Schnipper that an ICBC claim would have serious consequences for Mr. Nadeau. Mr. Nadeau asked Mr. Schnipper to call him. Mr. Schnipper says that in that phone call, Mr. Nadeau encouraged him to report the accident as a hit and run. Mr. Schnipper later texted Mr. Nadeau that he did not want to "participate in fraud". I accept Mr. Schnipper's description of Mr. Nadeau's post-accident behaviour and his phone call with Mr. Nadeau because they are consistent with the text messages. I discuss Mr. Nadeau's post-accident behaviour more below.
20. Mr. Nadeau gave ICBC a signed statement on September 12, 2020. In that statement, he said that he was travelling 30 to 40 km/h on the straight stretches of the road. He says that he slowed down as he approached the curve to what he "thought was an

appropriate speed". He said that he saw Mr. Schnipper coming the other way, travelling at least as fast as Mr. Nadeau. Mr. Nadeau said that he started pumping his brakes to try to slow down and steered to the right, but collided with Mr. Schnipper.

21. In a September 14, 2020 email to ICBC answering some follow up questions, Mr. Nadeau said that the road was narrow but he felt like Mr. Schnipper was "cutting towards" Mr. Nadeau's side of the road. Mr. Nadeau said he was on the right side of the road when the accident happened.
22. According to ICBC's notes, an adjuster spoke to Mr. Nadeau again on July 21, 2021. In that conversation, Mr. Nadeau said that he agreed with the 50/50 liability split because both parties were as far right as possible, but the road was too narrow for them to pass each other. He said that he did tap his brakes which caused him to skid.
23. Mr. Schnipper says that Mr. Nadeau's repeated requests that Mr. Schnipper lie to ICBC about the accident negatively impacts Mr. Nadeau's credibility. Mr. Nadeau admitted in his July 21, 2021 conversation with ICBC that the text messages he had sent to Mr. Schnipper were a "mistake and misjudgment". He also said that he was not pressuring Mr. Schnipper because he thought he was at fault, but because he did not have a drivers license. In its submissions in this dispute, ICBC did not respond to Mr. Schnipper's arguments about Mr. Nadeau's credibility.
24. I agree with Mr. Schnipper on this point. I find that this is not a situation where a person made an impulsive bad decision immediately after an accident and promptly regretted it. Rather, Mr. Nadeau continued to pressure Mr. Schnipper to lie to ICBC 2 days after the accident. I find that this negatively impacts Mr. Nadeau's credibility, and I have placed less weight on his evidence as a result.
25. There are 3 witness statements in evidence, all from people in Mr. Schnipper's camping party who were following Mr. Schnipper.
26. The first is from AW, who said that they had been friends with Mr. Schnipper for "a long time". AW said that Mr. Schnipper went first on the logging road, followed by AW and a third truck. AW said that the bend was sharp and steeply uphill. AW said that

Mr. Nadeau came around the bend fast and already skidding. AW said that Mr. Schnipper had fully stopped by the time Mr. Nadeau hit him. AW said that Mr. Nadeau skidded at least 20 feet.

27. ICBC argues that no weight should be put on AW's evidence because of his friendship with Mr. Schnipper. This submission apparently reflects a common ICBC practice to refuse to consider evidence from a party's family or friends. This does not reflect the law of evidence or the CRT's practice, which routinely weighs evidence from witnesses with relationships to a party. So, while I accept that AW is not entirely neutral, I find that this does not mean that their evidence should be disregarded entirely. It must be assessed on its own merits and the degree of their neutrality is just one factor to consider. I note that ICBC did not identify any reason to doubt AW's evidence other than their friendship with Mr. Schnipper.
28. I find that AW's evidence is reliable because they were following Mr. Schnipper closely. So, I find that AW had a good vantage point of the accident and had a good reason to be paying close attention to what was happening ahead of them. I find that AW's statement is generally consistent Mr. Schnipper's account of the accident, but the details are not identical. This suggests that it was AW's independent recollection and not the result of collusion with Mr. Schnipper. Overall, despite his longstanding friendship with Mr. Schnipper, I find AW's evidence generally credible, and in any event, more credible than Mr. Nadeau's for the reasons discussed above.
29. Mr. Schnipper provided statements from 2 other witnesses (one from AW's truck and the other from the third truck), but they did not see the accident itself, only the aftermath. I found these statements unhelpful.
30. Mr. Schnipper makes 2 other arguments.
31. First, he says that a photo of skid marks at the accident scene show that Mr. Nadeau's tires crossed into the right side of the road. He relies on a report from an ICBC employee, Roy Klymchuk, who reviewed the photos to provide ICBC with an opinion about the accident. Roy Klymchuk said that the vehicle damage was consistent with

both drivers' accounts. However, they also that if the skid marks were from the Jeep, they would indicate that the Jeep intruded into the right side of the road.

32. Mr. Schnipper says that the skid marks were from Mr. Nadeau's Jeep. He says that the skid marks were "fresh and clear", which indicates that they were recent. ICBC says that it is impossible to determine with any certainty whether the Jeep made the skid marks. On this point, I agree with ICBC. While the skid marks to appear fresh, there are many tire marks visible in the photos of the road. I find the skid mark evidence inconclusive and have put no weight on it.
33. Second, Mr. Schnipper argues that I should rely on Mr. Nadeau's multiple admissions of fault at the accident scene. ICBC argues that the *Apology Act* prevents me from considering the admission of fault because it came in the context of an apology. In reply, Mr. Schnipper argues that the express apology is distinct from the admission of fault, and that I can disregard the apology and rely on the admission of fault.
34. The *Apology Act* says that an apology cannot be considered in any determination of fault or liability. The *Apology Act* applies to administrative tribunals like the CRT. The definition of an apology in the *Apology Act* is somewhat complicated. In part, it says that an apology may include words that admit or imply an admission of fault. The question is whether the prohibition on considering an apology extends to admissions of fault made in the context of an apology.
35. In *Robinson v. Cragg*, 2010 ABQB 743, the Alberta Court of Queens Bench considered this argument in detail. In that case, a law firm had sent its client a letter about an error it made in a real property transaction. The letter set out the details of what had happened leading up to the error and apologized for the mistake. The law firm wanted the court to disregard the entire letter. The client wanted just the apology redacted.
36. The court drew a distinction between apologies that include admissions of fault or liability ("I am sorry, that was my fault") and apologies that include factual admissions ("I am sorry, I was looking at my phone while driving"). The court found that the

Apology Act prevented the court from considering admissions of fault or liability, but not factual admissions. The court redacted the single sentence that contained the apology and admitted the rest of the letter.

37. Alberta cases are not binding on me, but I find this reasoning persuasive and adopt it. The relevant parts of Alberta's *Apology Act* are identical to BC's *Apology Act*. I also find that the result in *Robinson* is consistent with how the *Apology Act* defines an apology, since the definition implies that some apologies include admissions of fault.
38. The BC Supreme Court reached essentially the same conclusion in *Vargas v. Kondola*, 2016 BCSC 2406, at paragraphs 104 and 105, although the court did not refer to *Robinson* or consider the issue in any detail. That case was about a car accident. After the accident, one of the drivers said that she was sorry, and that the accident was her fault. She also said that she was running late and unsure of where she was going. The court found that these factual statements about running late and being lost "went beyond an apology" and admitted them into evidence.
39. In this dispute, no one says that Mr. Nadeau made any factual admissions when he apologized. Rather, Mr. Schnipper wants me to rely on his admission of fault. I find that the *Apology Act* applies to Mr. Nadeau's admission of fault, and I have not considered it in making this decision.
40. That said, even without considering the skid marks or Mr. Nadeau's apology, I find that the weight of the evidence favours Mr. Schnipper's account of what happened. I rely primarily on AW's evidence. I also note that ICBC identified nothing in Mr. Schnipper's evidence to cause me to doubt his credibility. In contrast, as discussed above, I have determined that Mr. Nadeau's evidence is less credible.
41. With that, I find that Mr. Schnipper was on his side of the road. The road in question is remote and there are no measurements in evidence, but based on the photos in evidence I find that the road was wide enough to accommodate both vehicles. I find that Mr. Nadeau braked and skidded on the gravel into the side of Mr. Schnipper's truck. Based on AW's evidence, I find that Mr. Nadeau was likely travelling too fast

for the conditions and lost control of the Jeep. I find that Mr. Nadeau's failure to keep the Jeep on the right side of the road breached section 144(1) of the *Motor Vehicle Act* (MVA), which requires drivers to drive with due care and attention and with a reasonable consideration of other road users. I find that his conduct also fell below the standard of a reasonably competent driver.

42. I therefore find Mr. Nadeau was fully responsible for the accident. Mr. Baker sent ICBC an email that confirmed Mr. Nadeau was driving his Jeep with his consent, so I find that Mr. Baker is vicariously liable for Mr. Nadeau's negligence under section 86 of the MVA. I order them to pay Mr. Schnipper \$5,500 in non-pecuniary damages and \$3,970 for accelerated depreciation of his truck.

FEES, EXPENSES, AND INTEREST

43. The *Court Order Interest Act* (COIA) applies to the CRT. Section 2 of the COIA says that pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury. So, I award no interest on Mr. Schnipper's non-pecuniary damages.
44. Mr. Schnipper claims prejudgment interest on the accelerated depreciation claim, relying on *Chiang v. Kumar and Sharma*, 2018 BCPC 127. In that case, the court awarded prejudgment interest on the accelerated depreciation claim as of the accident date, although it did not say why. The BC Supreme Court has awarded prejudgment interest on accelerated depreciation both from the accident date (*Signorello v. Khan*, 2010 BCSC 1448) and from the date the owner sold the vehicle (*Scott v. Azzopardi*, 1991 CanLII 1601 (BC SC)). The court did not explain its decision on prejudgment interest in either case. The CRT also has contradictory decisions on this point. Several CRT members have declined to award prejudgment interest on accelerated depreciation because the applicant still owned the car, and therefore had not yet suffered a loss. (See, for example, *Dual Mechanic Ltd. v. Vicencio*, 2020 BCCRT 1460).

45. Previous CRT decisions are not binding on me. Court decisions are, but on this issue the court decisions are contradictory and include no reasoning or explanation.
46. Section 1 of the COIA says that prejudgment interest accrues from the date the cause of action (the right to bring a legal proceeding) arose. In *Cummings v. 565204 B.C. Ltd.*, 2009 BCSC 1009, at paragraph 73, the court found that it is not necessary for a vehicle owner to sell the vehicle to make an accelerated damages claim. The court also said that the assessment of damages is the day of the accident. By implication, I find that this means that the vehicle owner suffers the loss when the accident happens, not when they sell the vehicle. I therefore find the cause of action for accelerated depreciation arises on the accident date, not a later sale date. I find that Mr. Schnipper is entitled to prejudgment interest on the accelerated depreciation claim from the accident date to the date of this decision. This equals \$8.71.
47. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. Mr. Schnipper was successful, so I find he is entitled to be reimbursed for his \$225 in CRT fees. Mr. Schnipper also claimed \$707.75 for an accelerated depreciation report and \$20 for “copies and faxes”. ICBC does not dispute either claim. I award the \$707.75 for the report, which I find reasonable and necessary to prove his accelerated depreciation claim given that ICBC initially denied it. However, Mr. Schnipper does not describe why it was reasonable to incur \$20 in copying and fax charges given that the CRT’s process is entirely online. I decline to order reimbursement of any copying or fax charges.

ORDERS

48. Within 30 days of the date of this order, I order Mr. Baker and Mr. Nadeau to pay Mr. Schnipper a total of \$10,361.46, broken down as follows:
- a. \$9,470 in damages,
 - b. \$8.71 in prejudgment interest under the COIA.

- c. \$175 in CRT fees; and
- d. \$707.75 in dispute-related expenses.

49. Mr. Schnipper is also entitled to post-judgment interest under the COIA.

50. 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