



Civil Resolution Tribunal

Date Issued: February 22, 2022

File: VI-2021-004144

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Derby v. Swiatczak*, 2022 BCCRT 187

B E T W E E N :

TAMARA DERBY

APPLICANT

A N D :

SLAWOMIR ANDRZEJ SWIATCZAK

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 1, 2020, in Surrey, BC. The applicant, Tamara Derby, was driving eastbound on Highway 1 in the second of 4 lanes. Ms. Derby says a vehicle owned by the respondent, Slawomir Andrzej Swiatczak, changed lanes into her lane, ahead of another vehicle travelling directly in front of Ms. Derby. Ms. Derby says Mr. Swiatczak's vehicle then came to

an unforeseeable sudden stop. Ms. Derby was unable to brake quickly enough, and she collided with the vehicle in front of her.

2. Mr. Swiatczak's vehicle was not involved in the collision. The driver of his vehicle left the scene of the accident and has not been identified, as discussed further below.
3. Ms. Derby acknowledges that she is "somewhat to blame" for the accident, but she says Mr. Swiatczak's vehicle is also partly to blame. She does not otherwise say what the liability split should be, but I infer it is her position that the driver of Mr. Swiatczak's vehicle is almost entirely responsible. Ms. Derby says she was injured in the accident, and she claims \$5,627 for non-pecuniary (pain and suffering) damages, plus \$2,535.50 for gross past wage loss.
4. Mr. Swiatczak says that Ms. Derby failed to keep a proper lookout and was travelling too close to the vehicle in front of her. He says Ms. Derby is solely responsible for the accident and asks me to dismiss Ms. Derby's claims.
5. Ms. Derby is self-represented. Mr. Swiatczak represented by an employee of his insurer, Insurance Corporation of British Columbia (ICBC).

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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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 Ms. Derby with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Ms. Derby whether she wanted to continue with the CRT dispute or file a court proceeding instead. She 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.

Named respondents

12. When Ms. Derby filed her CRT application, Mr. Swiatczak's vehicle was unidentified, so Ms. Derby named ICBC and John Doe as respondents to this dispute. During the facilitation phase, ICBC identified Mr. Swiatczak as the owner of the vehicle Ms. Derby alleges was at fault, through dash cam footage. Ms. Derby then substituted Mr.

Swiatczak for the named John Doe. However, ICBC was unable to confirm who was driving Mr. Swiatczak's vehicle at the time of the accident, as Mr. Swiatczak did not recall the incident and neither did the other occasional driver of Mr. Swiatczak's vehicle.

13. Nevertheless, 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. There is no evidence before me to suggest Mr. Swiatczak's vehicle was being driven without his consent. So, I find Ms. Derby has a valid claim for damages against Mr. Swiatczak even though the driver of his vehicle is unidentified (see also *Megaro v. Vanstone*, 2018 BCSC 1501, affirmed in 2020 BCCA 273).
14. CRT staff advised me that after Mr. Swiatczak filed a Dispute Response, Ms. Derby requested to remove ICBC as a respondent. However, a further Amended Dispute Notice was not issued to reflect this change. ICBC did not participate in the tribunal decision process and the CRT did not request any submissions from ICBC. I am satisfied that Ms. Derby chose not to pursue any claims against ICBC, and she removed ICBC as a respondent. Therefore, under the CRT's authority in section 61(1) of the CRTA, I have amended the style of cause to remove ICBC as a respondent, leaving only Mr. Swiatczak as a respondent.

ISSUES

15. The issues in this dispute are:
 - a. Who is liable for the accident, and
 - b. If Mr. Swiatczak is fully or partially liable, what are Ms. Derby's damages?

BACKGROUND, EVIDENCE AND ANALYSIS

16. In a civil claim such as this, Ms. Derby as the applicant must prove her claims on a balance of probabilities (meaning "more likely than not"). While I have read all of the

parties' evidence and submissions, I only refer to what is necessary to explain my decision.

17. The circumstances of the accident are not in dispute. Ms. Derby was travelling east on Highway 1, approaching the exit at 104 Avenue. There are 4 lanes of travel for eastbound traffic along this stretch. Traffic in the far-right lane must exit the highway at the 104 Avenue exit. The far-left lane is an HOV lane.
18. Ms. Derby was driving in the second lane, beside the far-right lane. There was a red Nissan Leaf vehicle (Red Leaf) travelling in front of Ms. Derby. Ms. Derby says she was travelling at approximately the 100 kilometres per hour speed limit. Just before the accident location, the highway curves slightly to the left. Ms. Derby says that as she rounded the curve, she saw a "highway truck" ahead in the far-right lane with flashing arrows directing traffic in that lane to merge into Ms. Derby's lane, so she slowed to about 80 kilometres per hour.
19. Ms. Derby says a white Nissan Leaf vehicle (White Leaf) in the far-right lane, moved into her lane, in front of the Red Leaf. It is undisputed that Mr. Swiatczak is the White Leaf's owner. Ms. Derby says the Red Leaf started to brake, so she slowed to about 60 kilometres per hour. Ms. Derby says the White Leaf then came to an abrupt stop for no reason, and she did not have time to stop herself, so she rear ended the Red Leaf.
20. The parties provided dash cam footage taken from the Red Leaf. The dash cam footage shows the White Leaf in the far-right lane, with a darker colour mini-van in front of it, both well in front of the Red Leaf. The White Leaf then makes a lane change, so it is in front of the Red Leaf. The mini-van also has its left turn signal on, as it is approaching the truck with flashing lights and arrows.
21. The footage shows the White Leaf start to brake when it is almost beside the mini-van, and the Red Leaf also starts to slow. It appears that the White Leaf comes almost to a complete stop. The Red Leaf approaches the rear of the White Leaf but also appears to almost stop completely, just before the Red Leaf is jerked forward and to

the left, which I infer was the collision with Ms. Derby. It is undisputed that the Red Leaf did not collide with the White Leaf.

22. Ms. Derby says Mr. Swiatczak is responsible for the collision because his vehicle merged into traffic that was travelling at highway speeds and then came to a sudden stop. In contrast, Mr. Swiatczak says Ms. Derby was travelling too closely to the Red Leaf and failed to drive with due care and attention, causing the accident.

23. I find that sections 144 and 162 of the MVA are relevant:

- a. Section 144(1) says a person must not drive a motor vehicle on a highway without due care and attention, without reasonable consideration for other persons using the highway, or at a speed that is excessive relative to the road, traffic, visibility, or weather conditions.
- b. Section 162(1) says a driver of a vehicle must not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

24. It is generally accepted that a following driver will be found at fault for failing to avoid a collision with a vehicle that has stopped quickly in front of it (see *Chauhan v. Welock*, 2020 BCSC 1125 and *Skinner v. Fu*, 2010 BCCA 321). This is because the duty under section 162 of the MVA to maintain a safe following distance requires drivers to allow for emergencies that may arise, including sudden stops. In *Skinner*, the court specifically stated that “normally a sudden stop does not create an unreasonable risk of harm” (at paragraph 23).

25. It is possible in some situations for the following driver to rebut the presumption that they were negligent, by offering an explanation as to how the collision could have occurred without their negligence. Here, I find Ms. Derby has failed to do so. Given the presence of the truck with flashing lights, indicating a potential hazard on the roadway, and that Ms. Derby was aware traffic in the far-right lane would likely be

moving into her lane, I find she should have anticipated a potential sudden stop and adjusted her following distance accordingly.

26. I also rely on the fact that the Red Leaf was able to stop in time, without colliding with Mr. Swiatczak's vehicle. The Red Leaf's driver, AM, provided a statement to an independent adjuster. In that statement, AM said that while she had to slow down quickly for Mr. Swiatczak's vehicle, she did not feel her braking was abrupt or sudden, which I find is supported by the dash cam footage. On balance, I find that had Ms. Derby been driving with due care and attention with an appropriate following distance, she could have avoided the collision. I find her actions fell below the standard of a reasonably careful driver and her negligence caused the collision.
27. As for the driver of Mr. Swiatczak's vehicle, I find Ms. Derby has not established that driver was also negligent. The parties suggest that Mr. Swiatczak's vehicle likely slowed so that the mini-van could also change lanes. Mr. Swiatczak submits that it was reasonable for his vehicle to slow in the circumstances because the mini-van presented a potential hazard, given it had its turn signal on and may have tried to change lanes quickly. I find this is one potential explanation for why Mr. Swiatczak's vehicle slowed to a near stop, though there may be others.
28. As the driver of Mr. Swiatczak's vehicle remains unidentified, the true reason for the driver's actions cannot be confirmed. While I acknowledge that Ms. Derby did not anticipate Mr. Swiatczak's vehicle coming to a near or total stop on the highway, I find an unexpected stop alone is not sufficient to find the driver was negligent. I find the driver of Mr. Swiatczak's vehicle had good reason to exercise caution, given there was a potential for hazards or workers on the roadway and the mini-van was potentially changing lanes. Overall, I find it unproven that the actions of the person driving Mr. Swiatczak's vehicle fell below a reasonable standard of care.
29. For all the above reasons, I find Ms. Derby was solely responsible for the accident.
30. I note that Mr. Swiatczak advised CRT staff that he intended to claim a deduction from Ms. Derby's damages under section 83 of the *Insurance (Vehicle) Act*, though

he did not disclose any details of the claimed deduction. However, given my conclusion on liability, I find it is unnecessary to address Ms. Derby's damages, including any potential deductions. I dismiss Ms. Derby's claims.

FEES AND EXPENSES

31. 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 Ms. Derby was not successful, I find she is not entitled to reimbursement of her CRT fees.

32. Mr. Swiatczak did not pay any CRT fees or claim any dispute-related expenses, so I make no order.

ORDER

33. I dismiss Ms. Derby's claims, and this dispute.

Kristin Gardner, Tribunal Member