



Civil Resolution Tribunal

Date Issued: February 28, 2022

File: VI-2020-008866

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Pinnock v. Jing*, 2022 BCCRT 216

B E T W E E N :

TAMARA PINNOCK

APPLICANT

A N D :

ZHI JING

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 8, 2020 on the border between Vancouver and Burnaby, BC. The applicant, Tamara Pinnock, was driving east on Marine Way and turned left to proceed north on Boundary Road. The respondent, Zhi Jing, was driving west on Marine Way and collided with Ms. Pinnock in the intersection. Ms. Pinnock says she had an advance green light, and

the accident was Mr. Jing's fault because he was speeding and entered the intersection on a red light.

2. Mr. Jing says he had the green light, and that Ms. Pinnock turned directly in front of him, giving him no time to react or avoid the collision. He says Ms. Pinnock is fully responsible for the accident.
3. Ms. Pinnock was injured from the accident. The parties agree that she is entitled to \$5,627 for non-pecuniary (pain and suffering) damages and \$3,715.61 for past wage loss, subject to my liability determination. Ms. Pinnock also claims \$100 for clothing damage and \$25 for out-of-pocket expenses.
4. The applicant is self-represented. The respondent is represented by an employee of his 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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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 Ms. Pinnock with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Ms. Pinnock whether she wanted to continue with the CRT dispute or file a court proceeding instead. She 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 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.
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. During the CRT's tribunal decision process, Mr. Jing advised CRT staff that he intended to claim a deduction from Ms. Pinnock's damages award under the *Insurance (Vehicle) Act* (IVA). The IVA prohibits a party from telling the tribunal member details about any deduction until after the tribunal member has assessed damages. CRT staff informed me that the respondent intended to claim a deduction, but not the type of deduction or the amount.

12. Given my conclusion on liability below, I determined that it was unnecessary to make any findings about potential deductions, so I did not seek the parties' submissions on the claimed deductions.
13. Ms. Pinnock submitted 2 items of evidence late, which consisted of a doctor's note and the associated receipt for obtaining the note. I find this evidence is relevant to this dispute. Bearing in mind the CRT's flexible mandate, I admit the late evidence as Mr. Jing had an opportunity to respond to it, and so he is not prejudiced by its admission. Nevertheless, given my conclusion on liability, it was unnecessary for me to consider this evidence in my decision.

ISSUES

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

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, Ms. Pinnock as the applicant must prove her 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.
16. It is undisputed that the accident happened at about 11:20 pm on October 8, 2020 in the intersection of Marine Way and Boundary Road. As noted above, the main issue in this dispute is which party had the green light.
17. Ms. Pinnock says there was a red light for eastbound traffic on Marine Way as she approached the intersection with Boundary Road. Ms. Pinnock intended to turn left to proceed north on Boundary Road. There are 2 dedicated left turn lanes, and Ms. Pinnock says she is in the "outer" turn lane, which I infer is the lane next to the straight-through lanes. She says there were 2 other vehicles stopped in the "inner" turn lane,

which I infer was to Ms. Pinnock's left. She also says there was one vehicle stopped behind her in the outer left turn lane.

18. Ms. Pinnock says the left turn arrow turned green for her, and all the cars in the 2 left turn lanes drove off to turn left. She says that as she was turning, she saw lights from a westbound car approaching, and realized it was not going to stop. Ms. Pinnock says Mr. Jing's vehicle hit her passenger side fender, and her car spun around from the impact.
19. In contrast, Mr. Jing says he was travelling in the left of 2 westbound through lanes on Marine Way. He says that when he was about 100 metres from the intersection with Boundary Road, he saw his light for westbound traffic turn from red to green, so he continued to advance towards the intersection at about 50 to 60 kilometres per hour. Mr. Jing says he saw traffic stopped in what he believed to be the eastbound left turn lane, but as he entered the intersection, one car started turning left in front of him. Mr. Jing says he had no time to react before the other vehicle struck his front driver's side fender.
20. No witnesses to the accident came forward. A traffic light sequencing report from the City of Vancouver in evidence shows it is impossible for the left turn light for eastbound traffic on Marine Way to be green at the same time as the lights for westbound traffic proceeding straight on Marine Way. In other words, if Mr. Jing had a green light, then Ms. Pinnock had a red light and vice versa.
21. Ms. Pinnock submitted dash cam footage from her vehicle. Unfortunately, the camera was not directed at the road, and the footage does not show the vehicles colliding. Rather, the camera is pointed generally upward, so the footage provides a limited view of the street lamps and traffic lights (and the night sky), as Ms. Pinnock makes her left turn.
22. Ms. Pinnock says the footage confirms she had a green arrow when she made her turn. I disagree. I find that as Ms. Pinnock entered the intersection, the footage shows the traffic lights for southbound traffic on Boundary Road are red. As she starts to

turn, the footage shows the traffic lights for eastbound through traffic on Marine Way are green. At the very bottom of the screen is a light lower down, which I find is the left turn light for eastbound traffic turning left onto Boundary Road. This was Ms. Pinnock's light, and the footage shows that left turn light is red.

23. Just as the footage shows that red light, the sound indicates the collision occurs and Ms. Pinnock's vehicle spins to her left. When the vehicle comes to rest, the footage is pointed directly at the traffic lights for westbound traffic on Marine Way, which are green. Those were Mr. Jing's lights.
24. I acknowledge that the dash cam footage does not show what colour the left turn light was for eastbound traffic on Marine Way when Ms. Pinnock began her left turn. However, I note that the light sequencing report says that the left turn light goes amber for 3.5 seconds before turning red. So, given the light was already red when Ms. Pinnock was in the intersection making her turn, I do not accept her evidence that she started her turn immediately after the dedicated left turn light turned green.
25. Further, as noted, Ms. Pinnock says there were other left turning cars in the lane immediately to her left and one behind her, that all began their turns at about the same time as her. Mr. Jing says that only Ms. Pinnock was turning when he entered the intersection. I accept Mr. Jing's evidence on this point. I find Ms. Pinnock's vehicle was pushed and spun to her left during the collision, and any vehicles travelling in the lane beside her or behind her likely would have been involved in the accident. Yet, Ms. Pinnock and Mr. Jing's vehicles were the only 2 involved.
26. On balance, I find that Mr. Jing's account of the accident is the more persuasive version. I accept his evidence that his light turned green well before he entered the intersection. Therefore, I find Ms. Pinnock entered the intersection on a red light, and in doing so, her actions fell below the standard of a reasonably competent driver. I find there is no evidence before me to establish that Mr. Jing was negligent or reasonably could have avoided the collision. So, I find Ms. Pinnock was fully responsible for the accident.

27. Given my conclusion on liability, I find it is unnecessary to address Ms. Pinnock's claimed damages, including any potential deductions as discussed above. I dismiss Ms. Pinnock's claims.

FEES AND EXPENSES

28. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and dispute-related expenses. As Ms. Pinnock was unsuccessful, I dismiss her claim for CRT fees.

29. I order Ms. Pinnock to pay Mr. Jing \$25 for his CRT fees.

ORDER

30. Within 14 days of the date of this decision, I order Ms. Pinnock to pay Mr. Jing a total of \$25 for CRT fees.

31. Mr. Jing is also entitled to post-judgment interest under the *Court Order Interest Act*.

32. I dismiss Ms. Pinnock's claims.

33. 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