



Civil Resolution Tribunal

Date Issued: March 3, 2022

File: VI-2021-000842

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Thompson v. Tryon*, 2022 BCCRT 233

BETWEEN:

CHANCE THOMPSON

APPLICANT

AND:

KEVIN TRYON and ISLAND PACIFIC TRANSPORT LTD.

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on June 11, 2020 near Port Alberni, BC.
2. The applicant, Chance Thompson, was driving east on Highway 4 and the respondent, Kevin Tryon, was driving west on Highway 4, when their two vehicles

collided. Mr. Tryon was driving a truck with 2 attached semi trailers at the time of the accident. Mr. Thompson says that as he was rounding a corner in the road, Mr. Tryon's rear trailer slid out over the centre line and collided with the front of his vehicle. Mr. Thompson says Mr. Tryon is fully responsible for the accident.

3. Mr. Tryon denies that his rear trailer could have crossed the centre line. He says his truck and lead trailer were hugging the right side of the road as he rounded the curve, and the rear trailer would have followed the lead trailer. It is Mr. Tryon's position that Mr. Thompson drove over the centre line and collided with his rear trailer.
4. The respondent, Island Pacific Transport Ltd. (Island Pacific), owns the truck Mr. Tryon was driving.
5. Mr. Thompson was injured in the accident. The parties agree that he is entitled to \$5,500 for non-pecuniary (pain and suffering) damages and \$3,657.24 for past wage loss, subject to my liability determination.
6. Mr. Thompson is self-represented. The respondents are both represented by an employee of their insurer, Insurance Corporation of British Columbia (ICBC).

JURISDICTION AND PROCEDURE

7. 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.
8. 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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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.

9. The CRT provided Mr. Thompson with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked Mr. Thompson whether he wanted to continue with the CRT dispute or file a court proceeding instead. He chose to continue at the CRT.
10. 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.
11. 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.
12. 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.
13. During the CRT's tribunal decision process, the respondents advised CRT staff that they intended to claim a deduction from Mr. Thompson'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 respondents intended to claim a deduction, but not the type of deduction or the amount.

14. After reviewing the evidence and submissions about liability and damages, I advised the parties through CRT staff of my liability findings and assessment of damages. I then asked the parties for evidence and submissions about the claimed deductions, at which time the respondents advised they would not be seeking any deduction from the non-pecuniary damages and past wage loss awards, discussed further below.

ISSUES

15. The issues in this dispute are:
 - a. Who is responsible for the June 11, 2020 accident, and
 - b. What damages, if any, is Mr. Thompson entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

16. In a civil claim such like this one, as the applicant, Mr. Thompson bears the burden of proof on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
17. The following facts are undisputed. The accident occurred at about 1:30 pm on June 11, 2020. The parties were on Highway 4 near Cathedral Grove Forest, which is between Port Alberni and Qualicum Beach. It was raining heavily and there was water pooling on the road. Highway 4 has one lane in each direction with a double solid yellow line separating traffic. Mr. Thompson was travelling east and Mr. Tryon was travelling west. Each driver says the other’s vehicle crossed over the centre line while rounding a curve in the road.

18. From the single photograph of the curve in evidence, I find the roadway is relatively narrow and the curve is sharp enough that an approaching driver's view of oncoming traffic would be limited, noting the extent of foliage on the curve's inside corner.
19. Mr. Thompson says he was driving at approximately the 60 kilometre per hour speed limit, in a line of traffic, about 4 to 5 car lengths behind the vehicle in front of him. Mr. Thompson says the road curved to his left and just before he entered the curve, Mr. Tryon's truck came around the curve going the opposite direction. Mr. Thompson says as the rear trailer on Mr. Tryon's truck rounded the curve, it slid out into Mr. Thompson's lane and hit the front of his vehicle. It is undisputed that Mr. Thompson's vehicle veered into the ditch to his right as a result of the impact.
20. Mr. Thompson's friend, KS, was driving directly behind him. KS provided a statement to ICBC that he saw Mr. Tryon's truck with 2 trailers come around the corner just before Mr. Thompson reached the curve, and the second trailer drifted just over the centre line and collided with Mr. Thompson's vehicle.
21. Mr. Tryon says as he approached the bend in the road to his right, his truck and front trailer were hugging or slightly over the fog line (the solid white line on the right side of the road). Mr. Tryon says he was also travelling at about 60 kilometres per hour. As he went around the bend, Mr. Tryon says he felt an impact on his trailer, so he pulled over and stopped.
22. It is undisputed that the police attended the scene of the accident and gave Mr. Tryon a ticket for failing to keep to the right, contrary to section 150(1) of the *Motor Vehicle Act* (MVA). ICBC's file notes in evidence show that an ICBC employee received an email from the attending police officer, which stated they issued the ticket to Mr. Tryon based mainly on KS' statement because he had the best view of the collision. The officer also stated they accepted KS' account because it was consistent with the road curvature and location of Mr. Thompson's vehicle damage.
23. I find that Mr. Tryon did not see the collision between his trailer and Mr. Thompson's vehicle. However, Mr. Tryon says that his rear trailer could not have slid out into the

oncoming lane because his trailers are called “B-trains”, which he says means they follow each other as if they are on train tracks.

24. I find the behaviour and operation of B-train trailers is a matter that is outside ordinary knowledge and experience, so expert evidence is required (*Bergen v. Guliker*, 2015 BCCA 283). Under the CRT’s rules, an expert must not be an advocate for any party. As Mr. Tryon is a party to this dispute, I find his evidence is not sufficiently neutral to qualify as expert evidence on how B-train trailers operate. Therefore, I place no weight on Mr. Tryon’s assertion that his rear trailer could not possibly have crossed the centre line.
25. Mr. Tryon relies on a statement from ICBC employee Roy Klymchuk, who reviewed the parties’ statements and photos of the vehicle damage. Mr. Klymchuk stated it was “unlikely that the ‘B train’ secondary trailer would not follow the lead trailer”. Mr. Klymchuk went on to speculate that Mr. Thompson may have been attempting to change lanes to the left in order to pass the vehicle in front of him, and inadvertently caught the back of Mr. Tryon’s second trailer.
26. Mr. Tryon provided Mr. Klymchuk’s qualifications in accident reconstruction, and I accept that under the CRT’s rules he has the necessary training and experience to give an expert opinion about accident reconstruction based on vehicle damage. However, I find Mr. Klymchuk’s statement is of limited assistance in determining how the accident happened. Importantly, Mr. Klymchuk does not say it was a physical impossibility for the rear trailer not to follow the lead trailer, which I would have expected had that been the case. Rather, he says only that Mr. Thompson’s version is “unlikely”, without any explanation for why it is unlikely.
27. I find Mr. Klymchuk’s statement suggests there may be circumstances where the rear trailer could veer out from the lead trailer. Yet, he did not say how unlikely that scenario was or explain whether factors such as rainy weather conditions, pooling water on the road, or the sharpness of the curve Mr. Tryon was navigating at 60 kilometres per hour, might impact the likelihood of such an occurrence. There is also no evidence before me that Mr. Klymchuk or anyone else inspected Mr. Tryon’s

vehicle after the accident to determine whether his trailer system was operating properly. So, overall, I find I have insufficient evidence to conclude that Mr. Tryon's rear trailer could not have crossed over the centre line.

28. Rather, for the following reasons, I find Mr. Thompson's account of the accident to be the more persuasive version. First, I find Mr. Thompson's version is consistent with KS' evidence about how the accident happened. While I acknowledge that KS is Mr. Thompson's friend, so he is not an entirely neutral witness, I find that does not mean his evidence should be disregarded. Rather, his neutrality is just one factor, and his evidence must be assessed on its own merits.
29. I find that KS provided consistent statements about what he saw to both the police at the scene of the accident and to ICBC about 2 weeks later. I also find KS' evidence is reliable because he was following directly behind Mr. Thompson, so he likely had a good view and good reason to be paying close attention to what was happening ahead of them. On balance, I find KS' evidence is generally credible despite his friendship with Mr. Thompson.
30. Next, I do not accept Mr. Klymchuk's suggestion that Mr. Thompson may have been attempting to move to the left so he could pass traffic, which I find was a purely speculative comment. I accept Mr. Thompson's submissions that given the weather and road conditions, and the curve in the road, he would not have tried to pass at that location because it would have been unsafe. I also find it unlikely Mr. Thompson would have been trying to pass given the undisputed evidence that he was in a line of traffic, his friend was driving behind him, and there was double solid yellow line he would have had to cross, in contravention of section 155 of the MVA.
31. I acknowledge that it is possible Mr. Thompson crossed over the centre line in error. However, as noted, Mr. Tryon did not see the accident, he only felt the impact. So, there is no direct evidence that anyone saw Mr. Thompson's vehicle cross the centre line. On balance, I am not satisfied that he did so.

32. On the evidence before me, I find it is more likely than not that Mr. Tryon's rear trailer drifted over the centre line as it rounded the curve and collided with Mr. Thompson's vehicle. Section 150(1) of the MVA requires drivers to confine the course of their vehicle to the right-hand half of the road. So, I find Mr. Tryon breached section 150(1) of the MVA.
33. A breach of the MVA is not necessarily determinative of negligence (see *Naidu v. Zhong*, 2019 BCSC 1064 at paragraph 32). However, I find that Mr. Tryon was unaware that his rear trailer was drifting over the centre line. I find this lack of awareness shows Mr. Tryon was not driving with sufficient due care and attention. Overall, I find Mr. Tryon's lack of due care and attention, together with the breach of section 150(1) of the MVA, establishes that his driving fell below the standard of a reasonable driver in the circumstances. I find Mr. Tryon is fully responsible for the accident.
34. Given that Mr. Tryon was undisputedly driving Island Pacific's truck with its consent, I find Island Pacific is vicariously liable for Mr. Tryon's negligence under section 86 of the MVA, so they are both liable for Mr. Thompson's damages.
35. As noted, the parties came to an agreement that Mr. Thompson is entitled to \$5,500 for non-pecuniary damages and \$3,657.24 for past wage loss, subject to my liability determination. While this agreement did not necessarily account for any applicable deductions under the IVA, as noted above, the respondent ultimately did not seek any deductions, so I have made none.
36. I order the respondents to pay Mr. Thompson \$5,500 in non-pecuniary damages and \$3,657.24 for past wage loss.

FEES, EXPENSES AND INTEREST

37. The *Court Order Interest Act* (COIA) applies to Mr. Thompson's past wage loss. However, the details of when the wage loss occurred are not before me. On a judgment basis, I find Mr. Thompson is entitled to pre-judgment interest on the

\$3,657.24 from February 1, 2021, the date he filed his application for dispute resolution, to the date of this decision. This equals \$17.81.

38. 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. Thompson's non-pecuniary damages.
39. 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. I find Mr. Thompson is entitled to reimbursement of \$175 in CRT fees.

ORDERS

40. Within 30 days of the date of this decision, I order the respondents to pay Mr. Thompson a total of \$9,350.05, broken down as follows:
 - a. \$9,157.24 in damages,
 - b. \$17.81 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
41. Mr. Thompson is entitled to post-judgment interest, as applicable.
42. 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