



Civil Resolution Tribunal

Date Issued: March 15, 2022

File: VI-2021-003632

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Chatzispiros v. Kosicki*, 2022 BCCRT 286

B E T W E E N :

VASSILIOS CHATZISPIROS

APPLICANT

A N D :

ANTHONY KOSICKI

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on June 3, 2019 in Chilliwack, BC.
2. The applicant, Vassilios Chatzispiros, was travelling east in the curb lane on Industrial Way and came to a stop for a red light at Lickman Road. The applicant intended to

turn right. There was a dump truck towing a “pup trailer”, stopped for the red light in the lane to the applicant’s left, driven by the respondent, Anthony Kosicki. The applicant says that when the light turned green, the respondent turned right from the left lane, and the rear wheels on the respondent’s trailer caught the applicant’s vehicle and dragged it a few feet in the intersection. The applicant says the respondent is fully responsible for the accident.

3. The respondent says they had their right turn signal on, but due to the length of the dump truck and trailer, they could not complete the required wide right turn from the curb lane. The respondent says the applicant is at fault for not seeing their turn signal and for trying to squeeze into the curb lane.
4. The applicant was injured in the accident. The parties agree the applicant is entitled to \$5,500 for non-pecuniary (pain and suffering) damages, subject to my liability assessment. The applicant also claims \$884.52 for mileage to attend their medical appointments. Initially, the applicant claimed an additional \$2,000 for future care costs, but they withdrew this requested remedy during facilitation, so I find it is not before me.
5. The applicant is self-represented. The respondent is 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 the applicant with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked the applicant whether they wanted to continue with the CRT dispute or file a court proceeding instead. The applicant 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.
12. During the CRT's tribunal decision process, the respondent advised CRT staff that they intended to claim a deduction from the applicant'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. Given my conclusion on liability below, I determined that it was unnecessary to make any findings about potential deductions, so I did not ask the parties for further submissions on the claimed deductions.

13. The applicant submitted an item of evidence after the CRT's deadline. The evidence consisted of a list of medical appointments and mileage calculations. I find the late evidence is relevant to this dispute. Bearing in mind the CRT's flexible mandate, I admit the late evidence, as the respondent had an opportunity to review and respond to it, and so I find they are 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 June 3, 2019 accident?
- b. If the respondent is fully or partially at fault, what are the applicant's damages?

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, the applicant must prove their 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 and the photos in evidence confirm that there was considerable construction ongoing in and around the intersection of Industrial Way and Lickman Road at the time of the accident on June 3, 2019. Relevant to this dispute, I find the photos show the construction involved a dedicated right merge lane for eastbound traffic on Industrial Way onto southbound Lickman Road and an island on the

southeast corner of the intersection for pedestrian and traffic light posts, where construction crew members were operating a backhoe.

17. I find eastbound Industrial Way widened from a single lane to 2 lanes at about where the right merge lane started. The photos show pylons in the curb lane for eastbound traffic on Industrial Way approaching Lickman Road, which blocked the entrance to the right merge lane. The pylons continued along to the right of the island. The pylons then continued around the corner of the island and along the right lane for southbound traffic on Lickman Road.
18. The photos show that just before the intersection, where there were 2 lanes, the right lane had arrows painted on the road indicating it was for straight-through and right turning traffic. The left lane had a left turn arrow painted on the road.
19. The applicant says they turned left from a Tim Horton's parking lot onto Industrial Way going east. I find that where the applicant made their left turn, Industrial Way was still a single eastbound lane. The applicant says they saw ahead of them, the respondent's dump truck and 2 other vehicles behind it stopped in the left lane for a red light at Lickman Road.
20. As the applicant wanted to turn right at Lickman Road, the applicant says they moved into the right lane and stopped beside the respondent's dump truck. The applicant says that when the light turned green, they took their foot off the brake and moved forward about 2 to 3 feet, when the respondent suddenly accelerated, and made a sharp right turn in front of the applicant's vehicle. The applicant says they came to a stop, but the back of the respondent's rear trailer hit the applicant's vehicle and dragged it a few feet before stopping.
21. The respondent does not seriously dispute the applicant's account of what happened. In the respondent's initial report to ICBC, they stated Industrial Way had only a single lane at Lickman Road due to construction. The respondent planned to turn right, and said when the light turned green, they were "given the go ahead" and proceeded to make a right turn. The respondent stated the applicant tried to "squeeze in" on the

truck's right. I infer that the respondent did not see the applicant's vehicle before the collision.

22. The applicant denies that the right lane was closed and says that they properly entered the right lane to make a right-hand turn at Lickman Road. The applicant relies on the police report, which states that both eastbound lanes were open, though the construction crew closed the right lane after the accident.
23. A flag person in the construction crew, SC, witnessed the accident and provided a statement to an independent adjuster. SC described the right lane as being "half blocked" by the pylons to give the construction workers enough room and so big trucks could make right turns.
24. The accident scene photos from immediately following the accident do not show the pylons' placement much before the intersection. However, where the collision took place, I find the photos show the pylons encroached slightly into the relatively wide right lane on Industrial Way, and they extended somewhat into the intersection before bending to the right on Lickman Road. This made for a rather sharp right turn from the right lane. Nevertheless, on balance, I find that the right lane remained open at the time of the accident.
25. This brings me to whether the applicant properly entered the right lane to make their right turn. The applicant says they assumed the respondent was planning to go straight through the intersection or make a left turn, given the respondent's position in the left lane. However, I find the evidence is overwhelming that the respondent had their right turn signal on before the applicant reached the intersection, as discussed below.
26. SC stated that the dump truck had stopped at the intersection with their turn signal on and "just enough room to be able to swing out" and make their right turn. SC also stated that the applicant then "snuck in between" the truck and the pylons so when the light turned green and the respondent started their turn, the applicant got stuck between the truck's trailers.

27. Another independent witness, ND, was facing west, waiting to turn left onto Lickman Road. ND stated they also saw the respondent's dump truck with its right turn signal on, stopped "away from the pylons", when the applicant's car pulled up to the dump truck's right, with its right turn signal also on. ND said when the light turned green, the dump truck started to turn right. About half-way through its turn, ND stated the truck's trailer contacted the applicant's car, which ND said appeared to have moved forward from where it had initially stopped for the light.
28. Finally, a construction site worker, DM, also provided a statement to ICBC. DM stated they were using a backhoe right at the corner where the accident happened. DM admittedly did not see the collision but looked up when they heard it and saw the dump truck with its "right signals on all up the side of his truck".
29. The applicant does not specifically dispute that the respondent's right turn signal was on. In fact, the applicant submits the respondent "may have had his right indicator light on" but argues the signal would not have been visible to approaching traffic in the curb lane. I disagree. I find the photos of the dump truck show there are indicator lights not only on the back of the rear trailer, but also at the front of the rear trailer (at the connector between the 2 trailers), as well as beside the front headlights on the front wheel well and under the side mirror of the dump truck. Based on the 3 independent witnesses' evidence, I find all these indicator lights were likely working and signalling the respondent's intention to turn right as the applicant approached the red light at the intersection. Overall, I find the applicant should have seen the respondent's right turn signal was on well before they reached the intersection.
30. Section 144(1) of the *Motor Vehicle Act* (MVA) says a person must not drive without due care and attention. I find the applicant breached that provision by failing to see the respondent's turn signal and appreciate that the respondent would be turning right.
31. I find the respondent's turn signal alone should have been sufficient to alert the applicant that the respondent was turning right. However, I also note that the respondent says their dump truck and trailer were about 70 feet long, which I find appears consistent with the photos in evidence, and which the applicant does not

dispute. Given the construction and presence of the pylons in the right lane, I find the applicant should have been aware that the respondent would be unable to execute a right turn from the right lane due to the dump truck's length.

32. I also find the respondent's truck and the 2 vehicles behind it would have extended back to where Industrial Way was still a single lane. The applicant says they did not see any turn signals on the vehicles behind the respondent's dump truck. I find the applicant proceeded around the vehicles and the respondent's trailer, passing them on the right when there was no separate lane allowing the applicant to do so.

33. Section 158(1) of the MVA says that a driver must not pass another vehicle on the right except when the vehicle being overtaken is making a left turn or its driver has signaled their intention to make a left turn, when on a laned roadway where there is one or more unobstructed travel lanes, or on a one-way street. I find none of those exceptions apply here, and so I find that the applicant breached section 158(1) by passing the vehicles behind the respondent on the right, essentially squeezing past them and the respondent's pup trailer.

34. So, for all the above reasons, I find the applicant did not properly enter the right lane in order to turn right. Even though the applicant says they stopped as soon as the respondent started turning in front of them, I find the applicant should have realized the respondent was turning right well before they entered the right lane and arrived at the intersection. I also note there is no evidence the applicant honked or took any other action to avoid the collision, such as reversing, when they saw the respondent turning in front of them. Given the impact occurred with the back wheels of the respondent's rear trailer, I find the dump truck and the connector (between the dump truck and pup trailer) had already passed directly in front of the applicant's vehicle from left to right, before the accident happened.

35. Overall, I find the applicant failed to exercise an appropriate degree of care, attention, and caution, particularly given the construction in progress, and their actions fell below the expected standard of a reasonably careful driver under the circumstances. I find the applicant was negligent and their negligence caused the accident.

36. I turn then to the respondent's actions. I accept that in the circumstances, the respondent was properly positioned in the left lane to execute the required wide right turn. The applicant says the respondent should have checked their blind spot before turning. However, I find the respondent was reasonably focussed on the tight turn they had to negotiate and the construction crew in the intersection. I also find the respondent was entitled to assume that other drivers would be paying attention to their truck's signal lights and would proceed with the necessary degree of caution the circumstances required. See *Stewart v. Dueck*, 2012 BCSC 1729 at paragraph 54.

37. Further, as noted, I find the respondent's truck and the 2 vehicles behind it extended back to where Industrial Way was a single lane. I find the respondent reasonably assumed traffic would not illegally pass on the right to essentially sneak in beside their dump truck just before starting an obvious right turn. Overall, I find the applicant has not established that the respondent was negligent. So, I find the applicant was fully responsible for the accident.

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

FEES, EXPENSES AND INTEREST

39. 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 the applicant was unsuccessful, I dismiss their claim for CRT fees.

40. I order the applicant to pay the respondent \$25 for their CRT fees.

ORDERS

41. Within 14 days of the date of this decision, I order the applicant, Vassilios Chatzispiros, to pay the respondent, Anthony Kosicki, a total of \$25 for CRT fees.

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

43. I dismiss the applicant's claims.

44. 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