



# Civil Resolution Tribunal

Date Issued: March 18, 2022

File: VI-2021-004561

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Cheema v. Singh*, 2022 BCCRT 296

**B E T W E E N :**

ALMAS CHEEMA

**APPLICANT**

**A N D :**

SIMRANJIT SINGH

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on April 29, 2021, in Surrey BC.
2. Almas Cheema says that Simranjit Singh rear-ended her while she was waiting to turn left from 120A Street to 75A Avenue. She says that the accident was entirely Mr.

Singh's fault. She asks for \$5,000 in non-pecuniary (pain and suffering) damages and \$300 in out-of-pocket expenses.

3. Mr. Singh says that Ms. Cheema backed up into him. He says that the accident was therefore entirely her fault. He asks that I dismiss Ms. Cheema's claims. In the alternative, Mr. Singh says that Ms. Cheema is only entitled to \$1,500 to \$2,000 in non-pecuniary damages.
4. Ms. Cheema is self-represented. Mr. Singh is represented by an Insurance Corporation of British Columbia (ICBC) employee.
5. For the reasons that follow, I find that Ms. Cheema was fully responsible for the accident, and I dismiss her claims.

## **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March 2, 2021, the BC Supreme Court ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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. Cheema with information about the BC Supreme Court's decision and the BC Court of Appeal's partial stay. The CRT asked her whether she wanted to continue with the CRT dispute or file a court proceeding instead. Ms. Cheema 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. 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. During the CRT's tribunal decision process, Mr. Singh advised CRT staff that he intended to claim a deduction from Ms. Cheema'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, I find it unnecessary to make any findings about potential deductions, so I did not ask the

parties for submissions about Mr. Singh's claimed deductions before making this final decision.

## **ISSUES**

13. The issues in this dispute are:

- a. Who was at fault for the accident?
- b. If Mr. Singh was fully or partially at fault, what are Ms. Cheema's damages?

## **BACKGROUND**

14. In a civil claim such as this, Ms. Cheema as the applicant must prove her case on a balance of probabilities, which means "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 accident occurred at the intersection of 120A Street, which runs north-south, and 75A Avenue, which runs east-west, at around 11:30 am on April 29, 2021. This part of 120A Street is an entrance to a shopping plaza parking lot. Ms. Cheema was driving a Toyota Highlander. Mr. Singh was driving a Toyota Tacoma. Ms. Cheema was stopped on 120A Street facing north, waiting to turn left onto 75A Avenue from the parking lot. Mr. Singh was directly behind her.
16. It is undisputed that the front of Mr. Singh's vehicle and the back of Ms. Cheema's vehicle collided. The photos of Ms. Cheema's vehicle show minor visible damage to the left side of the rear bumper. According to a repair estimate in evidence, the accident caused just under \$5,000 in damage. The photos of Mr. Singh's vehicle show minor visible damage to his front bumper. There is no repair estimate in evidence for Mr. Singh's vehicle.

## EVIDENCE AND ANALYSIS

### *Who was at fault for the accident?*

17. As mentioned above, Ms. Cheema says she was stopped waiting to turn left onto 75A Avenue when Mr. Singh rear-ended her. She alleges that Mr. Singh was on the phone. She says that after the accident, they both got out of their vehicles to exchange information. She says that she called her husband, GC, to come to the accident scene. She says that during this call, Mr. Singh got on the phone with GC and admitted the accident was his fault. She says that Mr. Singh also admitted fault to her directly, and later in front of GC and her family's nurse, JC, after they arrived at the scene.
18. Mr. Singh provides a very different account. He says that Ms. Cheema was stopped waiting to turn left, angled slightly towards the left when he stopped behind her. He says that while he was stopped, she reversed into his front bumper. Mr. Singh denies admitting responsibility for the accident to anyone.
19. GC and JC both provided written statements confirming they heard Mr. Singh admit fault for the accident. Mr. Cheema's husband also said that Mr. Singh texted him so GC could provide Mr. Singh with the cost to fix the car damage. Mr. Singh admits sending him a text but denies offering to pay for the damage to Ms. Cheema's vehicle. The text from Mr. Singh to GC is in evidence, and it simply says "hello bhaji", which Mr. Singh says means "hello brother" in Punjabi. There was no further communication between the parties.
20. A witness, JD, gave a statement to ICBC on April 29, 2021, just over an hour after the accident. The ICBC notes of this statement are in the first person and include a confirmation that the statement was true, so I accept that the ICBC adjuster read the statement back to JD and JD confirmed its accuracy. JD said the following. They worked in the shopping plaza. They were walking to get something from their vehicle in the parking lot. They saw 2 vehicles, which I find were the parties' vehicles, preparing to leave the parking lot at 75A Avenue. Ms. Cheema had stopped past the

crosswalk. JD believed that a car was driving past on 75A Avenue, so Ms. Cheema started to back up to avoid getting hit. In doing so, Ms. Cheema backed into Mr. Singh. In a later statement, JD said that they did not approach the parties at the time because JD had to get back to work. However, JD later went back outside and spoke to Mr. Singh. JD did not speak to Ms. Cheema. It is unclear whether she was still there.

21. Ms. Cheema provided a statement from Sewa Rana, who works at Star Autobody. Sewa Rana said that they looked at Ms. Cheema's vehicle on the day of the accident. They said that in their opinion, the amount of damage could "only be done by someone rear ending it" and ruled out Ms. Cheema reversing into Mr. Singh. I find that Ms. Cheema wants to rely on Sewa Rana's opinion as expert evidence because reconstructing an accident based on vehicle damage is beyond common knowledge. Sewa Rana did not provide their qualifications, which CRT rule 8.3(2) requires, other than to say that they work at Star Autobody. While I accept that Sewa Rana likely has experience or training in vehicle repair, I am not satisfied that working at an autobody shop necessarily means he has experience or training in accident reconstruction. While I have discretion to waive the strict application of the CRT's rules, I find that it would not be appropriate to waive the requirement for Sewa Rana's qualifications because their opinion goes to the central issue in dispute. I therefore do not admit Sewa Rana's opinion as expert evidence and put no weight on it.
22. Mr. Singh provided evidence from 2 ICBC material damage estimators, Roy Klymchuk and Bruce Davidson. They both provided opinions in response to Sewa Rana's statement. Roy Klymchuk said it was not possible to rule out Mr. Singh's allegation that Ms. Cheema reversed into him based on the vehicle damage. Bruce Davidson said it was not possible to determine the vehicles' speeds based on the vehicle damage. Given that I have not admitted Sewa Rana's statement as expert evidence, I find it unnecessary to consider these opinions in any detail. Ultimately, I find that the physical evidence is neutral.
23. With that, I find that this dispute turns on the credibility of the parties and witnesses. On one hand, there are no witnesses or other objective evidence to support Ms.

Cheema's account of what happened. However, Ms. Cheema, GC, and JC all say Mr. Singh admitted the accident was his fault. On the other hand, JD is an independent witness whose account of the accident is essentially the same as Mr. Singh's account.

24. Ms. Cheema's only argument about JD's statement is that JD and Mr. Singh are "both Punjabi speaking" and are "working together" to blame her for the accident. There is no evidence that Mr. Singh and JD knew each other before the accident. I find the mere fact that they both speak Punjabi does not suggest that they are colluding. I find that JD is an independent witness. JD also proactively provided their account to Mr. Singh and ICBC. I find no reason to doubt their credibility. I also find that JD's evidence is reliable, because they had a good vantage point to observe the accident and because they provided ICBC with a statement almost immediately after the accident.
25. Mr. Singh says that I should give GC's and JC's evidence no weight. He says that their evidence that Mr. Singh admitted fault is hearsay. While that is technically true, admissions by parties are admissible as an exception to the traditional rules against hearsay. See *R. v. Hart*, 2014 SCC 52, at paragraph 63. In any event, section 42 of the CRTA says that the CRT may accept hearsay evidence even if it would not be admissible in court.
26. Mr. Singh also says that neither GC nor JC are neutral witnesses. I agree that GC, in particular, is an interested witness as Ms. Cheema's husband. As for JC, they provide nursing care to Ms. Cheema's family. The extent of this care is somewhat unclear. It is difficult to determine how neutral JC's evidence is, but I accept that JC has some ongoing relationship with Ms. Cheema's family. This lack of neutrality reduces the amount of weight I give their evidence, although I find it is not a reason to dismiss it altogether. In any event, I agree with Mr. Singh that GC's and JC's evidence does not speak directly to what actually happened because neither of them witnessed the accident.

27. With that, while it is impossible to know with certainty, I find that JD's credible and reliable account of the accident is the best objective evidence of what happened. I find that the accident likely occurred as JD and Mr. Singh said it did. I therefore find it unlikely Mr. Singh admitted fault.
28. I therefore agree with Mr. Singh that Ms. Cheema breached section 193 of the *Motor Vehicle Act*, which prohibits drivers from reversing a vehicle when it is unsafe to do so. I also find that reversing into Mr. Singh's parked car clearly fell below the standard of a reasonably competent driver. I find that Ms. Cheema was negligent.
29. As for Mr. Singh, I accept that he was stopped when the accident happened. With that, I find that there was nothing he should have done differently to prevent the accident. I find that he was not contributorily negligent.
30. Given my conclusion, I find it unnecessary to address the parties' arguments about Ms. Cheema's damages. I dismiss Ms. Cheema's claims.

## **FEES, EXPENSES, AND INTEREST**

31. 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. Ms. Cheema was not successful, so I dismiss her claim for CRT fees and dispute-related expenses. I also find that she must reimburse Mr. Singh for his \$25 in paid CRT fees. He did not claim any dispute-related expenses.

## **ORDERS**

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



33. I dismiss Ms. Cheema's claims.

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Eric Regehr, Tribunal Member