



Civil Resolution Tribunal

Date Issued: April 1, 2022

File: VI-2020-008210

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Takhar v. Gerelus*, 2022 BCCRT 372

BETWEEN:

KULDIP TAKHAR

APPLICANT

AND:

GLEN GERELUS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 20, 2019 in Surrey, British Columbia.
2. The applicant, Kuldip Takhar, says the respondent, Glen Gerelus, negligently hit her vehicle while she was turning left, causing Mrs. Takhar injury.

3. As a result of the accident, Mrs. Takhar seeks the following:
 - a. \$5,500 in non-pecuniary (pain and suffering) damages,
 - b. \$11,500 in past income loss,
 - c. \$7,500 in future income loss,
 - d. \$500 in special damages (out of pocket expenses), and
 - e. \$25,000 for losses related to Mrs. Takhar's vehicle.
4. The parties disagree about who is responsible for the accident. Mrs. Takhar says Mr. Gerelus entered the intersection on a red light, which Mr. Gerelus denies. Generally, Mr. Gerelus says Mrs. Takhar is not entitled to any damages because she was 100% responsible for the accident.
5. Mrs. Takhar is represented by Brandon Moscoe, legal counsel. Mr. Gerelus is represented by 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* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to \$50,000.
7. On March 2, 2021, the British Columbia Supreme Court (BCSC) ordered that sections 133(1)(b) and 133(1)(c) of the CRTA were unconstitutional and no longer in effect.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 BCSC's decision was appealed. The British Columbia Court of Appeal (BCCA) granted a partial stay of the BCSC's order on April 8, 2021. This means that parts of the BCSC's order are suspended until the BCCA makes its final decision. The partial stay allows the CRT to resolve claims under

sections 133(1)(b) and 133(1)(c) of the CRTA. It also allowed 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 Mrs. Takhar with information about the BCSC's decision and the BCCA's partial stay. The CRT asked Mrs. Takhar whether she wanted to continue with the CRT dispute or file a court proceeding instead. Mrs. Takhar 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 that 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, ICBC, on behalf of Mr. Gerelus, advised CRT staff it intended to claim a deduction from any damages awarded to Mrs. Takhar 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 Mr. Gerelus intended to claim a deduction, but not the type of deduction or the amount. Given my conclusion on

liability below, I determined it was unnecessary to make findings about any potential deductions, so I did not ask the parties for further submissions on the claimed deductions.

ISSUES

13. The issues in this dispute are:

- a. Who is responsible for the October 20, 2019 accident?
- b. What damages, if any, is Mrs. Takhar entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Mrs. Takhar, 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 have only addressed the evidence and arguments to the extent necessary to explain my decision. I also note that Mr. Moscoe, as Mrs. Takhar’s legal counsel, failed to provide any submissions in support of her damages claim, despite being given the opportunity to do so. However, given my conclusion on liability below, I find nothing turns on this.

Who is responsible for the accident?

15. It is undisputed that on October 20, 2019, Mrs. Takhar was southbound on 152nd Street in the left turn lane, intending to turn left onto Colebrook Road.
16. It is undisputed that 152nd Street has two northbound lanes and two southbound lanes. There is also a dedicated left turn lane southbound on 152nd Street at Colebrook Road. At the time, Mr. Gerelus was traveling northbound on 152nd Street, intending to continue straight through the intersection with Colebrook Road.

17. There is some confusion as to the traffic light's colour at the time, which I address below. Generally, Mrs. Takhar says she had the right of way to turn left when Mr. Gerelus improperly entered the intersection and their vehicles collided.
18. Mr. Gerelus's account of the accident is somewhat different. He says he safely entered the intersection on a green light, and Mrs. Takhar suddenly turned left in front of his vehicle. Mr. Gerelus says he was unable to stop before the vehicles collided.
19. There were also allegedly two witnesses to the accident. When he reported the claim to ICBC, Mr. Gerelus provided the contact information of a witness, SD. ICBC contacted SD who advised they were present and heard the accident but were unaware of the traffic light's colour. Mrs. Takhar provided another witness later, JH, whose statements are disputed.
20. JH provided various informal statements to ICBC between March 12, 2020 and January 22, 2021. In his initial statement on March 12, 2020, JH noted that he was riding his bike on the sidewalk, northbound on 152nd Street. He stated as he approached the intersection with Colebrook Road, the light was green but was about to turn yellow, so he stopped in anticipation. He saw Mrs. Takhar waiting to turn left, and also saw Mr. Gerelus approaching the intersection. JH noted he was not sure if Mr. Gerelus was going to stop or not, and that Mr. Gerelus changed lanes approximately 10 feet before the intersection and "at the last minute" Mr. Gerelus entered the intersection. JH noted the roads were wet that day.
21. On January 20, 2021, JH revised his statement in a phone call with ICBC and advised he stopped his bike because the light turned yellow. JH restated that Mr. Gerelus changed lanes 10 feet before the intersection and that it was unclear whether he was going to stop for the light. JH further added that Mr. Gerelus had "plenty of time to stop" and that he appeared to speed through the intersection, and entered the intersection on a solid yellow light, which turned red while he was in the intersection.

22. In a further email on January 22, 2021, JH stated Mr. Gerelus was “definitely in the wrong” and “was speeding”. After that statement, JH no longer responded to emails or phone calls.
23. Mr. Gerelus says little weight should be put on JH’s statement because there is no evidence he was actually present at the accident scene. Mr. Gerelus also argues Mrs. Takhar did not provide the information that JH existed or his contact information until March 10, 2020, nearly 5 months after the accident occurred. Mrs. Takhar did not acknowledge why there was a delay in providing the witness information, but argues the weight of JH’s statement should not be diminished based on a delay between the accident date and the statement’s timing.
24. Although I agree the timing of a statement does not necessarily diminish the weight to be given to a witness’s statement, I place reduced weight on JH’s statement. I say this for a few reasons. First, I find there is no explanation before me about why Mrs. Takhar did not give ICBC JH’s contact information until nearly 5 months after the accident. Second, to the extent JH comments on the speed of Mr. Gerelus’s vehicle, I place no weight on those statements. Although roughly estimating a vehicle’s speed is within ordinary human experience, I find JH’s comments about Mr. Gerelus’s speed to be too vague to hold any weight. Finally, I find JH’s evidence on the traffic light’s colour changes with his statements. Initially, he stated the light was green when he stopped his bike and saw Mr. Gerelus’s vehicle. In his later statement, JH says he stopped his bike for a yellow light, and that Mr. Gerelus entered the intersection on a yellow light which subsequently turned red.
25. I turn then to the parties’ evidence. For the following reasons, I accept Mr. Gerelus’s version of events. First, I find Mrs. Takhar’s statements in evidence are inconsistent. In her initial report to ICBC shortly after the accident in 2019, Mrs. Takhar stated she had an advanced green arrow and that Mr. Gerelus entered the intersection when faced with a red light. There was no mention of Mr. Gerelus changing lanes prior to entering the intersection. In another statement on March 10, 2022, nearly 5 months after her initial statement, Mrs. Takhar stated that while waiting to turn left, her “light

had been amber/orange for a significant time”. She further stated she saw Mr. Gerelus’s car traveling at a “higher than normal speed” and changing lanes before entering the intersection, and she assumed Mr. Gerelus would stop his vehicle for the light. Mrs. Takhar said she started her left turn after the light turned red, and that Mr. Gerelus entered the intersection and their vehicles collided.

26. Mr. Gerelus provided two statements to ICBC (October 22, 2019 and July 19, 2021). Mr. Gerelus maintains that he did not change lanes before entering the intersection, and that he entered the intersection on a green light when Mrs. Takhar suddenly turned left in front of him.
27. I prefer Mrs. Takhar’s initial accident description provided to ICBC over the one given some 5 months later. I say this because although she is incorrect that she did not have an advanced green light, I do accept the light facing her was green, as indicated by both Mr. Gerelus and JH’s initial statement. I find Mrs. Takhar’s first account was contemporaneous with the accident having just happened, not recounted several months later. Therefore, I find the traffic light was green for both southbound and northbound traffic on 152nd Street when Mrs. Takhar commenced her left turn.
28. Section 174 of the *Motor Vehicle Act* (MVA) says that a driver intending to turn left at an intersection must yield the right of way to traffic approaching from the opposite direction that is in the intersection, or is so close as to constitute an immediate hazard.
29. As stated in *Kabir v. Simpson*, 2016 BCSC 1594, if an intersection traffic light is green, the through driver (here, Mr. Gerelus) has the right of way, while if the light is red, the through driver must stop prior to entering the intersection. Where the light is yellow, it must first be determined who the dominant driver was. As noted above, I have found the light was green when Mrs. Takhar started her turn and Mr. Gerelus entered the intersection. Even if I accept JH’s and Mrs. Takhar’s later statements that the light had turned yellow, I find that Mr. Gerelus was so close to the intersection that his vehicle constituted an immediate hazard when Mrs. Takhar commenced her left turn. I say this for two reasons. First, Mrs. Takhar said herself that she saw Mr. Gerelus’s vehicle, she thought he was speeding, and “assumed” Mr. Gerelus would slow down

and stop. I find Mrs. Takhar acted unreasonably in assuming Mr. Gerelus would stop his vehicle after alleging he made a last-minute lane change while speeding, and therefore started her left turn when it was unsafe to do so. Additionally, based on JH's statement that Mr. Gerelus changed lanes 10 feet before the intersection and that it was unclear whether he was going to stop, I find Mr. Gerelus's vehicle posed an immediate hazard to Mrs. Takhar when she attempted to turn. As noted in *Raie v. Thorpe* (1963), 1963 CanLII 885 (BCCA), the point of time for assessing the question of immediate hazard arises the moment before the driver proposing to turn left starts their turn, not at an earlier point.

30. As noted in *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA), there is a primary duty on a left turning driver to ensure the way is clear before executing a left turn. Here, I find Mrs. Takhar breached her obligations under section 174 of the MVA for failing to take proper care that her turn could be safely made, and for failing to yield the right of way to Mr. Gerelus, whose vehicle posed an immediate hazard. I find Mrs. Takhar solely responsible for the October 20, 2019 accident, and I dismiss her related claim for damages.

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 tribunal fees and dispute-related expenses. Mrs. Takhar was not successful, so I dismiss her claim for CRT fees and dispute-related expenses. I also find that she must reimburse Mr. Gerelus for his \$25 in paid CRT fees. Mr. Gerelus did not claim any dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order the applicant, Kuldip Takhar, to pay the respondent, Glen Gerelus, a total of \$25 as reimbursement CRT fees.
33. Mr. Gerelus is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
34. Mrs. Takhar's claims are dismissed.
35. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court 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.

Andrea Ritchie, Vice Chair