



Civil Resolution Tribunal

Date Issued: May 27, 2022

File: VI-2022-001036
and VI-2022-001037

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Bailey v. Mathew*, 2022 BCCRT 629

BETWEEN:

SUSANNE BAILEY

APPLICANT

AND:

SHERLY MATHEW

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT) about liability for a motor vehicle accident that occurred on February 11, 2021 between the applicant, Susanne Bailey, and the respondent, Sherly Mathew.

2. The applicant filed two related motor vehicle disputes with the CRT: (1) a request that the CRT determine whether the applicant's injuries are "minor injuries" under the *Insurance (Vehicle) Act* (dispute VI-2022-001037), and (2) a claim for a liability determination and damages resulting from the accident (dispute VI-2022-001036).
3. The parties' insurer, Insurance Corporation of British Columbia (ICBC), internally concluded the applicant was 100% at fault for the accident. ICBC is not a party to either dispute.
4. For the purpose of this decision, I have been asked to determine liability for the accident. This is because if I find the applicant is 100% responsible for the accident, there is no further claim for damages and no need for a minor injury determination, which relates directly to damages. If I find the applicant is not 100% responsible for the accident, the above-noted disputes may continue through the CRT's decision process. For the reasons that follow, I dismiss both the above-noted disputes.
5. The applicant is self-represented. The respondent is represented by an ICBC adjuster.

JURISDICTION AND PROCEDURE

6. These are the CRT's formal written reasons. 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)(b) of the CRTA gives the CRT jurisdiction over the determination of whether an injury is a "minor injury" under the *Insurance (Vehicle) Act*. 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. At the time the applicant filed her CRT dispute, there was an ongoing legal challenge about whether sections 133(1)(b) and (c) of the CRTA were constitutional. The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect. The British Columbia Court of Appeal (BCCA)

then granted a partial stay of the BCSC decision, which allowed the CRT to continue resolving claims under these CRTA sections while the challenge was heard at the BCCA.

8. On May 12, 2022, the BCCA overturned the BCSC's decision. This means the CRT retains exclusive jurisdiction to resolve claims under sections 133(1)(b) and (c) of the CRTA. However, given the applicant already consented to continuing her dispute at the CRT, nothing turns on the BCCA's decision.
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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
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.

ISSUE

12. The issue in this dispute is who is responsible for the February 11, 2021 accident and, if it is the applicant, whether her claims for a minor injury determination and for damages should be dismissed.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant 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.
14. The accident occurred at the intersection of West 12th Avenue and Hemlock Street in Vancouver, British Columbia. The following facts are undisputed:
 - a. The accident occurred around 7:15pm in the intersection.
 - b. The applicant was traveling eastbound on West 12th Avenue.
 - c. The respondent was traveling northbound on Hemlock Street.
 - d. The respondent’s front fender struck the applicant’s right front passenger side door.
15. The parties disagree about the colour of the traffic lights at the intersection. The applicant says her traffic light was green on West 12th Avenue, while the respondent says it was her traffic light on Hemlock Street that was green.
16. The applicant says the respondent should be held 100% responsible for the accident for entering the intersection on a red light. So, the central issue in this liability dispute is the light’s colour when the applicant entered the intersection.

17. I turn to the relevant provisions of the *Motor Vehicle Act* (MVA):

- a. Section 127 says a driver facing a green light may proceed through the intersection, but must yield the right of way to vehicles lawfully in the intersection at the time the light became green.
- b. Section 129 says a driver facing a red light must stop their vehicle before entering the intersection, and must not proceed until a traffic control signal instructs the driver they are permitted to do so.

18. As noted, the parties each claim they had a green light. In addition to the parties, there were 3 independent witnesses who provided statements either to an independent adjuster or to ICBC. They are ML, DF, and VCB. Between these 5 people, only the applicant says the light was green for West 12th Avenue traffic.

19. ML was the driver of the first car in the southbound curb lane on Hemlock Street. ML told the independent adjuster that he was stopped for a red light. When the light for Hemlock Street traffic turned green, ML says he saw the applicant's vehicle eastbound on West 12th Avenue approaching the intersection "at a high rate of speed" out of the corner of his eye. Unsure of whether the applicant was going to stop, ML held his position behind the stop line despite having a green light. ML says there were 2 vehicles that had stopped for the Hemlock Street red light northbound, and when the light turned green, one hesitated but the respondent entered the intersection, in a "normal" fashion, not accelerating fast. ML says the accident occurred when the respondent's vehicle was about one car length into the intersection.

20. DF was the front seat passenger in ML's vehicle. She said she was not particularly paying attention to traffic, but that she looked up when ML commented he did not think the applicant's vehicle was going to stop. DF said when she looked up she saw the light was green for Hemlock Street traffic and then the applicant's car crossed in front of their vehicle, against a red light, and the collision occurred.

21. The third witness, VCB, provided a statement over the phone to ICBC. VCB advised she was stopped southbound on Hemlock Street, the second vehicle back from the intersection in the lane closest to the centre line. VCB said while waiting, the light for Hemlock traffic turned green but the car in front of her did not move. VCB said she then saw a vehicle going “extremely fast” eastbound on West 12th Avenue which proceeded to run the red light. VCB says the respondent’s vehicle was the first vehicle traveling northbound on Hemlock Street and entered the intersection when the light went green, and the collision occurred.
22. There is no indication any of the witnesses knew either of the parties before the accident occurred.
23. A Motor Vehicle Traffic Collision Police Investigation Report also noted a contributing factor to the accident was the applicant “ignoring [a] traffic control device”. There is no such notation for the respondent.
24. Although the applicant submits that witnesses and police reports “can be wrong”, I find the weight of the evidence in this case shows it was more likely than not that the applicant entered the intersection on a red light, contrary to section 129 of the MVA. I find the applicant was unlawfully in the intersection when the respondent’s light was green. I find the applicant’s negligence was the sole cause of the accident, and I therefore find the applicant is 100% liable for the accident.
25. As I have found the applicant solely responsible, it follows that she is not entitled to damages resulting from the accident. Therefore, I dismiss both the related minor injury determination and damages disputes.
26. 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. As the applicant was not successful, I find that she is not entitled to reimbursement of her paid tribunal fees. The respondent paid a \$25 response fee total for the two disputes, and I find she is entitled to reimbursement of the \$25 paid. Neither party claimed dispute-related expenses.

ORDERS

27. Within 30 days of the date of this decision, I order the applicant, Susanne Bailey, to pay the respondent, Sherly Mathew, a total of \$25 for reimbursement of tribunal fees.
28. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.
29. I order the applicant's claims in disputes VI-2022-001036 and VI-2022-001037 dismissed.

Andrea Ritchie, Vice Chair