



Civil Resolution Tribunal

Date Issued: June 14, 2022

File: VI-2022-002333

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Penner v. Thompson*, 2022 BCCRT 698

BETWEEN:

CHARLENE LYNN PENNER

APPLICANT

AND:

DONNA MARGARET THOMPSON

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT). The applicant, Charlene Lynn Penner, was a pedestrian involved in a motor vehicle accident on September 16, 2021 with the respondent driver, Donna Margaret Thompson. Ms. Penner says she suffered injuries as a result of the accident.

2. Ms. Penner claims against Ms. Thompson for \$5,672 in pain and suffering (non-pecuniary) damages, plus \$80 as reimbursement for an ambulance bill (special damages).
3. The question before me in this decision is whether Ms. Penner's claim is statute-barred under section 115 of the *Insurance (Vehicle) Act* (IVA).
4. Ms. Penner is self-represented. Ms. Thompson is represented by an employee of the Insurance Corporation of British Columbia (ICBC).

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the 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 in an accident claim, up to \$50,000.
6. At the time Ms. Penner filed her CRT dispute, there was an ongoing legal challenge about whether section 133(1)(c) of the CRTA was 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 The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect.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. Ms. Penner elected to continue her dispute at the CRT.
7. On May 12, 2022, the BCCA overturned the BCSC's decision. This means the CRT retains jurisdiction to decide liability and damages claims under section 133(1)(c) of the CRTA. However, given Ms. Penner already consented to continuing her dispute at the CRT, nothing turns on the BCCA's decision.
8. 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.

9. 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.
10. 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

11. The issue in this decision is whether Ms. Penner's claims against Ms. Thompson are statute-barred and therefore must be dismissed.

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Ms. Penner bears the burden of proof on a balance of probabilities, meaning "more likely than not". In making this decision I have relied on the Dispute Notice and Ms. Penner's submissions.
13. In her Dispute Notice, Ms. Penner describes that on September 16, 2021, while she was a pedestrian in a crosswalk in Gibsons, British Columbia, she was struck by a vehicle driven by Ms. Thompson. Ms. Penner says there is no dispute about fault, although I note Ms. Thompson has not yet filed a Dispute Response.
14. As a result of the accident Ms. Penner says she suffered several weeks of pain and suffering. So, Ms. Penner claims \$5,672 in non-pecuniary damages, plus \$80 in special damages.

15. As of May 1, 2021, British Columbia's vehicle insurance scheme changed. Part of the changes included an amendment to the IVA to impose a general ban on individuals bringing actions for bodily injury as a result of a motor vehicle accident. Section 114 of the IVA states that these changes apply to accidents that occur on or after May 1, 2021.
16. Section 115 of the IVA specifically says:
 - a. A person has no right of action and must not commence or maintain proceedings respecting bodily injury caused by a vehicle arising out of an accident, and
 - b. No action or proceeding may be commenced or maintained respecting bodily injury caused by a vehicle arising out of an accident.
17. Several exceptions to this ban are listed in section 116 of the IVA and section 13 of the *Enhanced Accident Benefits Regulation*, none of which apply here.
18. As noted, the accident occurred on September 16, 2021. Given section 115 of the IVA, I find that Ms. Penner's claims against Ms. Thompson for non-pecuniary and special damages relating to her bodily injuries are statute-barred and must be dismissed.
19. Nothing in this decision prohibits Ms. Penner from starting an action against ICBC for accident benefits related to her accident injuries.

DECISION AND ORDER

20. I order Ms. Penner's claims, and this dispute, dismissed.

Andrea Ritchie, Vice Chair