



Civil Resolution Tribunal

Date Issued: July 28, 2022

File: SC-2022-000084*

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Allen v. Lealess*, 2022 BCCRT 862

BETWEEN:

CAMERON ALLEN

APPLICANT

AND:

WILLIAM LEALESS

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute was filed as a small claims dispute. For the reasons discussed below, I have decided this dispute under the Civil Resolution Tribunal's accident claims

* This dispute was filed as a small claims dispute, but was decided under the CRT's accident claims jurisdiction.

jurisdiction. This dispute is about an accident between a motor vehicle owned and driven by the applicant, Cameron Allen, and the respondent cyclist, William Lealess.

2. Mr. Allen says Mr. Lealess improperly tried to pass Mr. Allen's vehicle on the right while Mr. Allen was attempting a right turn, which led to Mr. Lealess striking the side of Mr. Allen's vehicle. Mr. Lealess says Mr. Allen abruptly turned right in front of him, causing the accident.
3. Mr. Allen asks that Mr. Lealess be held 100% responsible for the accident, and seeks \$125 as reimbursement of his insurance deductible, plus \$1,032 for increased insurance premiums. Mr. Lealess denies responsibility.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.

Jurisdiction

9. Although Mr. Allen started this dispute in the CRT's small claims jurisdiction, I find it falls within the CRT's accident claims jurisdiction. Section 118 of the CRTA gives the CRT jurisdiction over small claims disputes about damages up to \$5,000, which I find describes Mr. Allen's claim against Mr. Lealess. As noted above, section 133(1)(c) of the CRTA gives the CRT jurisdiction over a claim for liability and damages in respect of an accident.
10. "Accident" is defined in section 101 of the *Insurance (Vehicle) Act* (IVA) as an accident caused by a vehicle in which a person suffers bodily injury. Although Mr. Allen does not allege any injury, Mr. Lealess undisputedly was injured as a result. So, I find the May 11, 2021 collision is an accident as defined by section 101 of the IVA.
11. Additionally, I find this dispute is a claim for liability and damages relating to the accident, those damages being a deductible (related to vehicle damage) and increased insurance premiums.
12. Section 1(2) of the CRTA says that a small claims dispute that may also fall under another category of CRT jurisdiction must be decided under the other jurisdiction, rather than under the CRT's small claims jurisdiction. So, as noted above, I have found this dispute should be decided under the CRT's accident claims jurisdiction set out in CRT section 133(1)(c).

Tort Ban

13. The accident occurred on May 11, 2021. Mr. Allen is insured out-of-province. Mr. Lealess, as a cyclist, does not require vehicle insurance. Sections 171 and 172(1) of Part 11 of the IVA say that for accidents on or after May 1, 2021, a person has no

right of action and no action or proceeding may be commenced or maintained for vehicle damage for an accident that occurs on a highway and involves at least two included vehicles. A bicycle is not an “included vehicle” under this provision. So, I find Part 11 of the IVA which limits actions or proceedings for vehicle damage does not apply to this accident.

ISSUE

14. The issue in this dispute is to what extent, if any, Mr. Allen is entitled to reimbursement for his paid deductible and increased insurance premiums.

EVIDENCE AND ANALYSIS

15. In a civil claim such as this, the applicant Mr. Allen must prove his claims on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision.
16. The background facts are largely not in dispute. On May 11, 2021, Mr. Allen and Mr. Lealess were both traveling eastbound on Marine Drive in West Vancouver, approaching Stearman Avenue. Marine Drive in that area is one lane in each direction. There is no dedicated bike lane, and cyclists and motorists are expected to share the roadway.
17. Mr. Allen says the eastbound lane of Marine Drive was not wide enough for his vehicle and Mr. Lealess’s bicycle to travel side-by-side, which Mr. Lealess does not dispute. From my review of the evidence, I agree.
18. As noted above, Mr. Allen says he was driving ahead of Mr. Lealess’s bicycle when he turned on his right turn signal, slowed his vehicle, and started to turn right onto Stearman Avenue when Mr. Lealess struck the side of Mr. Allen’s vehicle. Mr. Lealess says Mr. Allen turned abruptly in front of him, causing the accident.

19. Initially, Mr. Allen sought \$500 as reimbursement of his insurance deductible, but later lowered this amount to \$125. From the insurance policy in evidence, I can see that Mr. Allen's applicable deductible was \$500. So, I infer that Mr. Allen was held 25% responsible for the accident, resulting in the \$125 deductible which he now seeks reimbursement for. As noted, Mr. Allen also seeks reimbursement of \$1,032 for increased insurance premiums between 2021 and 2022.
20. So, the main issue in this dispute is who is responsible for the May 11, 2021 collision. The relevant provisions of the *Motor Vehicle Act* (MVA) are as follows:
- a. Section 183(1) says a cyclist on the road has the same rights and duties as a driver of a vehicle. Section 183(14) says, among other things, that a person must not operate a cycle on a highway without due care and attention.
 - b. Section 158(1)(a) says 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 so make a left turn. Section 158(2) says, despite subsection (1), the driver must not pass on the right if the movement cannot be made safely.
 - c. Section 144(1) says a person must not drive without due care and attention.
21. Each party says the other is solely responsible for the collision and that the other breached the relevant sections of the MVA.
22. There is dash cam footage in evidence from Mr. Allen's right side mirror. It shows the roadway to the right of and behind Mr. Allen's vehicle, including Mr. Lealess as he cycled behind, and then beside, Mr. Allen. The dash cam footage shows that as Mr. Allen slowed his vehicle, Mr. Lealess continued to pedal and caught up with Mr. Allen. Although Mr. Lealess says he stopped pedaling to ensure he did not improperly pass Mr. Allen on the right, I find the video shows he immediately began pedaling again and was pedaling his bicycle to pass Mr. Allen's slowing vehicle until immediately before the collision occurred.

23. Mr. Allen says he signaled his intention to turn right, shoulder checked, noted Mr. Lealess behind his vehicle, and proceeded to turn right. Although Mr. Lealess says Mr. Allen “suddenly” signaled and turned right, I find the video does not support any sudden movements by Mr. Allen.
24. Based on the video footage, I find Mr. Lealess was attempting to pass Mr. Allen’s slowing vehicle on the right, contrary to section 158 of the MVA. However, despite Mr. Allen’s arguments, I find his actions also contributed to the accident. I say this because Mr. Allen admittedly checked his mirror and saw Mr. Lealess behind his vehicle. I find had Mr. Allen exercised the required care, he should have noticed that Mr. Lealess was gaining on Mr. Allen’s slowing vehicle, and taken action to avoid a collision, such as delaying the start of his turn. I find this was a breach of section 144 of the MVA.
25. I find both parties’ MVA breaches were contributing factors for the accident, so I must evaluate the extent or degree to which each departed from the standard of care owed under the circumstances (see: *Nelson v. LaFarge Canada Inc.*, 2013 BCSC 1152).
26. The *Nelson* case has similarities to this one. The plaintiff was cycling in the eastbound lane when a cement truck turned right and a collision occurred. The court found the plaintiff cyclist failed to take reasonable care for his own safety, and his attempt to pass a large, slow-moving truck on the right was a breach of section 158(2) because the movement could not be made safely. Additionally, the court found the defendant truck driver was negligent for failing to keep a more vigilant look out after seeing the plaintiff cyclist earlier, and not ascertaining the cyclist’s location before starting his right turn. The court held the plaintiff cyclist 65% responsible and the defendant truck driver 35% responsible.
27. However, here I find Mr. Allen is less blameworthy than the driver in *Nelson*. I say this because in *Nelson*, the court found the defendant truck driver driving a large cement truck was held to a higher standard, given he was a professional truck driver. The court found the truck driver in *Nelson* was required to exercise great caution due to

the potential for more severe damage to persons and property. So, I find Mr. Allen 25% responsible for the accident and Mr. Lealess 75% responsible.

28. As noted above, Mr. Allen has already been held 25% responsible for the accident. As such, the reimbursement he seeks would only be awarded if he were found to be 0% at fault. So, I find Mr. Allen is not entitled to reimbursement of the amounts claimed, which are based on his 25% responsibility. I dismiss Mr. Allen's claims.
29. 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 Mr. Allen was not successful, he is not entitled to reimbursement of tribunal fees. He did not claim any dispute-related expenses.
30. In his submissions Mr. Lealess claimed dispute-related expenses for travel time to collect evidence (\$120), plus pain and suffering damages (\$25,000), and property damage (\$1,463.99). First, the pain and suffering and property damages are not dispute-related expenses. Mr. Lealess did not file a counterclaim. Mr. Allen says Mr. Lealess has already been paid by Mr. Allen's insurer, which Mr. Lealess does not dispute. I make no findings about Mr. Lealess's claims for personal injury and property damage.
31. As for Mr. Lealess's claim for travel time, this is essentially a claim for "time spent" on this dispute, which is not permitted under the CRT rules. Additionally, Mr. Lealess provided no evidence in support of this claim. I dismiss Mr. Lealess's claim for dispute-related expenses.

ORDER

32. Mr. Allen's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair