



Civil Resolution Tribunal

Date Issued: August 8, 2022

File: VI-2021-006647

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Turk v. Karmshil*, 2022 BCCRT 893

BETWEEN:

MAZEN TURK

APPLICANT

AND:

RAHUL KARMSHIL

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 9, 2020 in Burnaby, British Columbia.

2. The applicant, Mazen Turk, was driving south on Griffiths Drive, straight through the intersection with Southpoint Drive. At the same time, the respondent, Rahul Karmshil, was driving northbound on Griffiths Drive, attempting to turn left onto Southpoint Drive. The two vehicles collided in the intersection, and Mr. Turk says he was injured as a result.
3. Mr. Turk says Rahul Karmshil should be held solely responsible for the accident for turning left in front of him. In contrast, Rahul Karmshil says Mr. Turk is responsible for the accident for entering the intersection against the traffic light.
4. Mr. Turk seeks \$5,000 in non-pecuniary (pain and suffering) damages, plus \$682.50 in towing expenses.
5. Mr. Turk is self-represented. Rahul Karmshil is represented by an employee of their insurer, the Insurance Corporation of British Columbia (ICBC).

JURISDICTION AND PROCEDURE

6. 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)(b) of the CRTA gives the CRT jurisdiction over the determination of whether an injury is a minor injury under the *Insurance (Vehicle) Act* (IVA). 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.
7. At the time Mr. Turk filed his 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 The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect.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 that the CRT retains jurisdiction to resolve claims under section 133(1)(c) of the CRTA, and exclusive jurisdiction to resolve claims under section 133(1)(b). However, given Mr. Turk already consented to continuing his 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 tribunal'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.

Vehicle damage

12. In his Dispute Notice, Mr. Turk initially also requested \$2,900 for the total loss value of his vehicle. CRT staff advised that this aspect of Mr. Turk's claim was resolved prior to adjudication, so I have not addressed it in this decision.

ISSUES

13. The issues in this dispute are:

- a. Who is responsible for the October 9, 2020 accident?
- b. What damages, if any, is Mr. Turk entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant Mr. Turk bears the burden of proving his 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 note Mr. Turk did not provide any documentary evidence or provide any final reply submissions, despite having the opportunity to do so.

Who is responsible for the accident?

15. Griffiths Drive has 3 lanes in each direction at Southpoint Drive. The southbound lanes are straight through, two of the northbound lanes are straight through, and one northbound lane is a dedicated left turn lane. The intersection is a T-intersection, as Southpoint Drive does not cross through Griffiths Drive. Rahul Karmshil was in the northbound left turn lane on Griffiths Drive. Mr. Turk was in the middle of the 3 southbound lanes on Griffiths Drive. None of this is disputed.

16. Rahul Karmshil was in the midst of their left turn when the two vehicles collided. The front end of Mr. Turk’s vehicle struck the two passenger side doors of Rahul Karmshil’s SUV.

17. In his initial report to ICBC, Mr. Turk said the vehicle to his left, in the leftmost southbound lane, had stopped to make a left turn. In his Dispute Notice, Mr. Turk says a big box truck to his left was “driving very slowly” so he was unable to see any oncoming vehicles. I find Mr. Turk was mistaken in his initial report to ICBC, as vehicles are unable to turn left from southbound Griffiths Drive, as it is a T-intersection

with no through road that direction. In any event, Mr. Turk says the light turned yellow before he entered the intersection, but he determined it was safe to proceed through. He says Rahul Karmshil suddenly turned left in front of him, and the accident occurred.

18. Rahul Karmshil's version of the accident is somewhat different. They say they approached the Southpoint Drive intersection when the light was already green. They waited in the left turn lane while traffic passed. When the light turned yellow, southbound traffic in lanes 1 and 3 stopped, and they started their left turn. Rahul Karmshil said when they started their turn, Mr. Turk's vehicle was approximately 2 to 3 car lengths back from the intersection. As Rahul Karmshil made their turn, Mr. Turk entered the intersection. Rahul Karmshil says when the accident happened, their turn was almost complete and they were directly facing Southpoint Drive.
19. There was one witness to the accident who provided a signed statement. SS was working as a crossing guard at the intersection, standing on the southwest corner, looking towards southbound traffic on Griffiths Drive. SS said Rahul Karmshil arrived on a green light and waited in the left turn lane for traffic to clear. The light turned yellow, and southbound traffic in lanes 1 and 3 slowed to a stop. SS said Rahul Karmshil then started their left turn on a stale yellow light. While Rahul Karmshil was completing their turn, Mr. Turk entered the intersection and the vehicles collided while the traffic light was red.
20. Based on the evidence, I find Rahul Karmshil did not "suddenly" turn in front of Mr. Turk as Mr. Turk alleges. I find Rahul Karmshil was already established in their turn when Mr. Turk entered the intersection, consistent with both Rahul Karmshil's and SS's evidence. I am also satisfied Mr. Turk entered the intersection on a very late yellow, which is not particularly disputed.

21. I turn then to the relevant provisions of the *Motor Vehicle Act* (MVA):
- a. Section 128 says when a traffic light turns yellow, a vehicle approaching the yellow light must stop before entering the intersection unless the stop cannot be made safely.
 - b. Section 174 says 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 to the intersection it constitutes an immediate hazard.
22. When turning on a red or very stale yellow light, a left turning driver (like Rahul Karmshil) is generally entitled to assume that oncoming drivers will obey the law by stopping at the traffic light. However, they cannot blindly turn without assessing whether it is safe. A left turning driver must still take reasonable care to avoid an accident (see: *Lozinski v. Maple Ridge (District)*, 2015 BCSC 1277 at paragraphs 70-71).
23. In *Kokkinis v. Hall*, 1996 CanLII 2404 (BCCA), the court stated that a yellow light is not a signal to accelerate or pass traffic that is slowing to a stop. Here, the evidence is that Mr. Turk approached the intersection on a yellow light, and determined (incorrectly) that it was safe for him to cross the intersection despite the light's colour. In spite of Mr. Turk admittedly noticing vehicles around him slowing to a stop, Mr. Turk did not slow his vehicle for the light. I find Mr. Turk was attempting to "beat" the yellow light, ignoring the fact that traffic around him had stopped. Additionally, Mr. Turk admits he was unable to see oncoming traffic due to the large, slowing or stopped vehicle to his left. I find his decision to proceed through the intersection as he did was negligent.
24. In *Henry v. Bennett*, 2011 BCSC 1254, the court found the plaintiff entered the intersection on a "stale" yellow, which turned red while he was in the intersection. Vehicles in the other lane, which were ahead of the plaintiff, had stopped, but the plaintiff tried to beat the yellow light. He struck the defendant, who was turning left. The court found the plaintiff 100% responsible for the accident.

25. Although there is generally a “heavy onus” on left turning drivers, as noted above, Rahul Karmshil was entitled to assume that Mr. Turk would obey the rules of the road. Here, I find Rahul Karmshil appropriately yielded the right of way to oncoming traffic southbound on Griffiths Drive while the light was green, waited for traffic to stop when the light turned yellow, and then safely started their left turn, in compliance with section 174 of the MVA. So, I find Rahul Karmshil bears no responsibility for the October 9, 2020 accident. I find Mr. Turk 100% responsible.
26. As a result, it follows that Mr. Turk is not entitled to any damages. I do note, however, that despite claiming \$5,000 for non-pecuniary damages, Mr. Turk provided no medical or other supporting evidence documenting his alleged injuries, their duration, or the alleged impact the injuries had on him.
27. Mr. Turk’s claims are dismissed.

FEES, EXPENSES AND INTEREST

28. 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 Rahul Karmshil was successful, I find Mr. Turk must reimburse him \$25 for tribunal fees. As Mr. Turk was unsuccessful, I dismiss his claim for tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

29. Within 30 days of the date of this decision, I order the applicant, Mazen Turk, to pay the respondent, Rahul Karmshil, a total of \$25 as reimbursement of tribunal fees.
30. Rahul Karmshil is entitled to post-judgment interest, as applicable.
31. Mr. Turk’s claims are dismissed.

32. Under sections 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia 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