



Civil Resolution Tribunal

Date Issued: August 29, 2022

Files: VI-2021-001337
and VI-2022-001342

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Tsamantanis v. Utas*, 2022 BCCRT 960

BETWEEN:

DAWN TSAMANTANIS

APPLICANT

AND:

NORMAN UTAS and TRU-FIT FASTENERS & SUPPLY, LTD.

RESPONDENTS

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 November 18, 2020 between the applicant, Dawn Tsamantanis, and a vehicle driven by the respondent, Norman Utas, and owned by the respondent, Tru-Fit Fasteners & Supply, Ltd. (Tru-Fit).

2. Ms. Tsamantanis filed two related motor vehicle disputes with the CRT: (1) a request that the CRT determine whether her injuries are “minor injuries” under the *Insurance (Vehicle) Act* (dispute VI-2022-001342) and (2) a claim for a liability determination and damages resulting from the accident (dispute VI-2021-001337).
3. The Insurance Corporation of British Columbia (ICBC) insures Ms. Tsamantanis, Mr. Utas, and Tru-Fit. ICBC internally concluded Ms. Tsamantanis was 100% at fault for the accident.
4. For the purposes of this decision, I have been asked to determine liability for the accident. This is because if I find Ms. Tsamantanis 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 Ms. Tsamantanis 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. Ms. Tsamantanis is self-represented. An ICBC adjuster represents all of the respondents.

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 exclusive 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 Ms. Tsamantanis 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 jurisdiction to resolve claims under sections 133(1)(c) of the CRTA, and exclusive jurisdiction to resolve claims under section 133(1)(b). However, given Ms. Tsamantanis 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 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.

Late evidence and allegations against ICBC

12. While reviewing the evidence and submissions, ICBC referred to Mr. Utas's statement, which was not in evidence. I requested ICBC provide this statement and reminded ICBC that it must submit all relevant evidence. In response, ICBC provided two statements by Mr. Utas.
13. Ms. Tsamantanis was given the opportunity to provide further submissions on the late evidence. In her submissions she made allegations about ICBC and its representative adjuster lying to her throughout her claim. ICBC is not a party to these disputes, or this preliminary matter. This decision is solely about liability for the November 18, 2020, and so I make no findings about Ms. Tsamantanis's allegations against ICBC.
14. Similarly, in those further submissions, Ms. Tsamantanis questioned whether all documents were properly given to her as a result of her Freedom of Information (FOI) request to ICBC. Ms. Tsamantanis did not provide a copy of the FOI request, or specifically say which documentation she received in response to it. In any event, as already noted ICBC is not a party to this dispute, so I make no findings about the FOI request.

Legal representation

15. In her later submissions in response to Mr. Utas's statements, Ms. Tsamantanis argued she "should have had a chance to hire a lawyer and had proper counsel". Under CRT rule 1.16(4), a party involved in a dispute in the CRT's accident claims jurisdiction (including Ms. Tsamantanis's disputes) does not need the CRT's permission to have a lawyer represent them. So, nothing prevented Ms. Tsamantanis from seeking or obtaining legal counsel during the course of these proceedings.

ISSUE

16. The issue in this decision is who is responsible for the November 18, 2020 accident and, if it is Ms. Tsamantanis, whether her claims for a minor injury determination and for damages should be dismissed.

EVIDENCE AND ANALYSIS

17. In a civil claim such as this, Ms. Tsamantanis 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.
18. The accident occurred at the intersection of Lougheed Highway and 222 Street/Haney Bypass in Maple Ridge, British Columbia. The following facts are undisputed:
 - a. The accident occurred around 5:30 pm in the intersection.
 - b. Ms. Tsamantanis was traveling westbound on Lougheed Highway, intending to turn left onto 222 Street. She was in the left turn lane.
 - c. Mr. Utas was traveling eastbound on Lougheed Highway, intending to continue straight through the intersection.
19. Details about the specific intersection, such as how many lanes there are in each direction, were not provided by the parties. As discussed below, the light colour when Mr. Utas entered the intersection is the central issue in dispute.
20. Ms. Tsamantanis says that when she entered the left turn lane the light was red and there were vehicles in front of her. She said there was “a lot of traffic” on the road. She said the “green turn signal came on” and the cars in front of her were able to turn. She moved forward into the intersection and the light turned yellow. Ms. Tsamantanis says she saw Mr. Utas’s truck at least 200 feet away from the intersection. The applicant says the light turned red, remained red for approximately 5 seconds and then she started her left turn when Mr. Utas ran the red light and struck her vehicle.
21. In contrast, Mr. Utas says as he was approaching the intersection his light turned yellow. He said Ms. Tsamantanis hesitated and then turned left in front of him when his vehicle was already into the intersection, and the collision occurred.

22. Ms. Tsamantanis says Mr. Utas should be held 100% responsible for the accident for entering the intersection on a red light.
23. There were 3 independent witnesses to the accident. On behalf of the respondents, ICBC submitted its file notes of its telephone conversations with the witnesses and the parties about the accident circumstances. There are no statements directly from the witnesses. The witness statements are hearsay. The CRT has discretion to admit evidence that would not be admissible in court proceedings, including hearsay. In *Medel v. Grewal*, 2019 BCCRT 596, I accepted similar hearsay evidence on the basis that ICBC, as part of its standard procedures when investigating an accident, receives oral reports from witnesses and records those summaries in its file. I accept and adopt that same reasoning here. I find the witness statements are admissible.
24. The first two witnesses, WA and ZP, were in a vehicle directly behind Ms. Tsamantanis. WA was the front seat passenger and ZP was driving. WA said Ms. Tsamantanis was waiting a long time on the yellow light, and that Ms. Tsamantanis started turning as Mr. Utas entered the intersection. WA stated she was 100% certain the light was yellow as Mr. Utas entered the intersection and changed to red after the impact. WA thought Mr. Utas was approaching the intersection “fast”.
25. Similarly, ZP stated the light was yellow when Mr. Utas entered the intersection. ZP said when the light turned yellow Ms. Tsamantanis seemed to hesitate about turning, but then “went for it”. ZP said it was raining hard and was dark outside at the time. ZP said Mr. Utas was “pretty close” to the intersection when the light turned yellow, but said traffic was all going slower than the speed limit due to the conditions.
26. The final witness, AT, was stopped somewhere on 222 Street. It is not clear whether they were facing northbound or southbound. They said Ms. Tsamantanis was turning left onto 222 Street “[their] direction”. It is also not clear whether AT was the first vehicle in a line of cars, or some vehicles back. AT said Ms. Tsamantanis initially tried to make her left turn on a yellow light but was unable to. Once the light was red, AT said Ms. Tsamantanis started her turn and the truck driven by Mr. Utas entered the

intersection on a red light. AT said they believed Mr. Utas was braking to slow down for the yellow light before ultimately proceeding through the intersection.

27. Ms. Tsamantanis provided an “Econolite Signal Timing Sheet” for the intersection of Lougheed Highway and 222 Street/Haney Bypass. However, the document is mostly just a spreadsheet of numbers, and Ms. Tsamantanis did not provide any explanation of how the numbers are to be read. So, I place no weight on the timing sheet.
28. On balance, I find Mr. Utas likely entered the intersection when the light was yellow. I say this because I place more weight on the statements of WA and ZP than I do AT. I find WA and ZP were in the best position to view the accident and the light, given they were also intending to make the same manoeuvre as Ms. Tsamantanis. Although Ms. Tsamantanis argues ZP’s and WA’s evidence is less reliable as she says they were incorrect in describing the accident’s location, I find that is not the case. As for AT’s evidence, as noted it is unclear where AT’s vehicle was specifically located, though it was on 222 Street, which was undisputedly facing a red light. So, I find AT’s evidence about the light colour for east and westbound traffic on Lougheed Highway is less reliable.
29. I turn then to the relevant provisions of the *Motor Vehicle Act* (MVA):
 - a. Section 128(1)(a) says that a motorist approaching a yellow light must stop unless it would be unsafe to do so.
 - b. Section 174 says that a motorist turning left must yield to oncoming traffic that is either in the intersection or so close to the intersection that it is an immediate hazard.
30. The decision in *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA) sets out the obligations of a left turning driver. In *Pacheco*, Justice Legg said that a servient driver (the left turning driver, here, Ms. Tsamantanis) has an obligation not to proceed with their turn unless it can be done safely, and that the mere presence of a left turning driver does not place an extra duty on the dominant driver (the through driver, here, Mr. Utas) to take extra care (also see: *Krist v. Bock*, 2018 BCSC 433).

31. Justice Legg further said that when a servient driver disregards their statutory duty to yield the right of way, then to place any blame on the dominant driver, the servient driver must establish that the dominant driver was aware or reasonably should have been aware of the servient driver's disregard of the law. Any doubt must be resolved in favour of the dominant driver (see: *Walker v. Brownlee* (1952), 1952 CanLII 328 (SCC) at 461).
32. At the same time, Mr. Utas had an obligation under section 128 of the MVA to only enter the intersection on a yellow light if he could not otherwise stop safely before it. As noted above, I have found the light was yellow when Mr. Utas entered the intersection. In his statements, Mr. Utas said he was no more than 2 car lengths from the intersection when the traffic light turned yellow. Mr. Utas said given it was raining hard and the roads were wet, he felt it was unsafe to try to stop so he continued through the intersection. In his statement, ZP stated Mr. Utas was "close" to the intersection. Taking into consideration the proximity of Mr. Utas's vehicle and the dark and wet road conditions at the time, I find Mr. Utas reasonably decided he could not stop safely before entering the intersection. Therefore, I find Mr. Utas's vehicle constituted an immediate hazard when Ms. Tsamantanis started her left turn. So, I find Ms. Tsamantanis started her left turn when it was unsafe to do so, resulting in the accident. I find Ms. Tsamantanis 100% responsible for the accident for breaching her obligations under section 174 of the MVA for failing to yield the right of way to Mr. Utas.
33. Given my findings on liability, it follows that Ms. Tsamantanis is not entitled to damages resulting from the accident. Therefore, I dismiss both the related minor injury determination and damages disputes.
34. 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 respondents were successful, I find Ms. Tsamantanis must reimburse them \$75 for paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

35. Within 30 days of the date of this decision, I order the applicant, Dawn Tsamantanis, to pay the respondents, Norman Utas and Tru-Fit Fasteners & Supply, Ltd., \$75 for reimbursement of tribunal fees.
36. The respondents are also entitled to post-judgment interest under the *Court Order Interest Act*.
37. Ms. Tsamantanis's claims in disputes VI-2021-001337 and VI-2022-001342 are dismissed.
38. 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