



Civil Resolution Tribunal

Date Issued: September 9, 2022

File: VI-2021-007292

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Lei v. 1288275 BC Ltd.*, 2022 BCCRT 1001

BETWEEN:

RUN AI LEI

APPLICANT

AND:

1288275 B.C. LTD., GURPARTAP SANDHU, and KHUSHPINDER
SINGH GREWAL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on April 12, 2021 in Vancouver, British Columbia.

2. The applicant, Run Ai Lei, was stopped at a red light facing south in the curb lane on Nanaimo Street, waiting to turn right onto Kingsway. At the same time, a tractor trailer was also intending to make a wide right turn onto Kingsway from southbound Nanaimo Street. The tractor trailer was driven by the respondent, Khushpinder Singh Grewal, and owned by the respondent corporation, 1288275 B.C. Ltd. (128).
3. It is unclear how the respondent, Gurpartap Sandhu, is involved in the accident.
4. Ms. Lei and Khushpinder Singh Grewal each say they had their right turn signal on and it was their right of way to turn, blaming the other for the accident.
5. Ms. Lei says she was injured in the accident. She seeks \$5,000 in non-pecuniary (pain and suffering) damages, plus \$6,200 as compensation for her vehicle, which was determined to be a total loss.
6. Ms. Lei is represented by a family member, who is not a lawyer. 128, Khushpinder Singh Grewal, and Gurpartap Sandhu are all represented by an employee of their insurer, Insurance Corporation of British Columbia (ICBC). ICBC is not a party to this dispute.

JURISDICTION AND PROCEDURE

7. 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)(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*. 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 claims, up to \$50,000.
8. 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.

9. 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 Ms. Lei already consented to continuing her dispute at the CRT, nothing turns on the BCCA's decision.
10. 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.
11. 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. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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.
12. 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.

ISSUES

13. The issues in this dispute are:

- a. Who is responsible for the April 12, 2021 accident?
- b. What damages, if any, is Ms. Lei entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, Ms. Lei as 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.
15. First, I will deal with Gurpartap Sandhu’s status as a respondent. ICBC says Gurpartap Sandhu was not a driver, passenger, or owner of the tractor trailer at the time of the accident. ICBC asks the claims against Gurpartap Sandhu be dismissed.
16. Ms. Lei did not acknowledge or address these submissions. Ms. Lei also did not explain Gurpartap Sandhu’s alleged involvement with the accident, if any. So, I find Ms. Lei has not proven she has any claim against Gurpartap Sandhu and I dismiss her claims against them. My references below to “the respondents” refer only to 128 and Khushpinder Singh Grewal.

Who is responsible for the accident?

17. Nanaimo Street southbound is 3 lanes: a dedicated left turn lane, and two through lanes. The right curb through lane is the width of two lanes.
18. The parties largely dispute how the accident happened. There was no dashcam footage and no witnesses to the accident, other than the parties. Ms. Lei says she

was in the southbound curb lane, waiting at the red light to turn right onto Kingsway. She says as the light turned green, the tractor trailer quickly appeared to her left and suddenly turned right in front of her vehicle, before she even had a chance to start her turn. She says the front right part of the truck's trailer hit her front left bumper, tearing it from her vehicle.

19. In contrast, the respondents say Khushpinder Singh Grewal was stopped at the red light, with the tractor part of the truck straddling the two southbound through lanes, while the trailer part of the truck was fully in the curb lane. The respondents say Khushpinder Singh Grewal saw Ms. Lei's vehicle behind the truck before they started their right turn. Khushpinder Singh Grewal says while in the middle of their turn, they heard a honk and immediately stopped the truck and saw Ms. Lei had tried to pass the truck on the right, and the vehicles had collided.
20. In support of their position, the respondents provided an opinion from Bruce Davidson, a Material Damage Compliance Advisor with ICBC. Mr. Davidson says he has worked with ICBC's material damage department for 21 years and has experience in accident reconstruction and vehicle damage examinations. Although Mr. Davidson is an employee of the respondents' insurance company and representative in this dispute, I find he provided his opinion in the course of his regular employment and is sufficiently neutral. I accept Mr. Davidson's evidence as expert evidence under the CRT's rules. Mr. Davidson reviewed both Ms. Lei's vehicle and the tractor trailer. Mr. Davidson provided the opinion that the impact to Ms. Lei's vehicle was back to front, consistent with the tractor trailer moving forward past Ms. Lei's vehicle. Mr. Davidson also said, based on the striations to Ms. Lei's left front wheel, it appears her vehicle was at rest when the collision occurred, struck by the moving right rear tires of the trailer.
21. I find Mr. Davidson's opinion is more consistent with Ms. Lei's version of the accident than the respondents' version. I say this because Ms. Lei explained her vehicle was fully stopped and waiting to turn when the collision occurred, while Khushpinder Singh

Grewal said that Ms. Lei was attempting to pass the tractor trailer on the right when the accident occurred.

22. I also put less weight on Khushpinder Singh Grewal's evidence due to inconsistencies in their statements. In their initial report to ICBC, Khushpinder Singh Grewal said that they signaled to maneuver into the left through lane to take up both lanes to make a wide right turn onto Kingsway. In a subsequent telephone statement to ICBC, Khushpinder Singh Grewal said the truck was straddling the left and right through lanes, while the trailer was fully into the right lane. Khushpinder Singh Grewal also made a third statement to an independent adjuster hired by ICBC. The independent adjuster's report stated that Khushpinder Singh Grewal reported "the curb lane was wide enough that he did not have to protrude into the middle lane to make the turn". A copy of that statement, other than the independent adjuster's summary, is not in evidence, and ICBC has not explained why. ICBC is an experienced litigant and is well aware of the need to provide all relevant evidence in a dispute.
23. The independent adjuster's summary of their conversation with Khushpinder Singh Grewal is hearsay evidence. However, 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, including hearsay evidence. Here, I find the later statement made by Khushpinder Singh Grewal is relevant and admissible, as it shows a pattern of inconsistency. The respondents could have explained the perceived inconsistency by providing the statement in its entirety but, as noted, they failed to do so.
24. On balance, I prefer Ms. Lei's version of events, consistent with Mr. Davidson's opinion about the vehicles' damage. I find Ms. Lei was already stopped at the stop line waiting to turn right when Khushpinder Singh Grewal started his right turn and was not attempting to pass the tractor trailer on the right.
25. The relevant provisions of the *Motor Vehicle Act* (MVA) are as follows:
 - a. Section 144(1) says a person must not drive without due care and attention.

- b. Section 165 says a driver intending to turn right at an intersection must make the turn as close as possible to the right hand curb or edge of the roadway.
26. I find Ms. Lei complied with section 165 of the MVA by waiting to turn right from as close as possible to the right hand curb. Although there is no allegation Khushpinder Singh Grewal was more left than necessary to make a right hand turn given the size of the tractor trailer, I find they breached section 144 of the MVA by failing to see Ms. Lei's vehicle stopped in the right lane, waiting to turn. I find Ms. Lei's vehicle was there to be seen, with her right signal on. I find Khushpinder Singh Grewal 100% responsible for the accident. As the tractor trailer's owner, 128 is joint and severally liable, further to section 83 of the MVA.

Damages

27. As noted above, Ms. Lei claims \$5,000 for non-pecuniary damages and \$6,200 in damages for her vehicle, which was undisputedly a total loss.

Vehicle damage

28. For the vehicle damages, on August 9, 2021 ICBC paid Ms. Lei a total of \$6,202.75 as settlement for the loss of her vehicle, after deducting her \$300 deductible. Ms. Lei does not explain why she claimed a further \$6,200 in this dispute. She did not provide any evidence or submissions in support of this claim. However, as I have found her 0% responsible for the accident, I find she is entitled to reimbursement of her \$300 paid deductible.

Non-pecuniary damages

29. In the Dispute Notice, Ms. Lei said that she suffered back pain and leg pain from the accident. In her submissions, Ms. Lei wrote that "ICBC has done a great job covering the damages through my insurance policy" and nothing else. She did not explain the injuries she suffered, the duration of those injuries, or the impact those injuries had on her work or home life.

30. I had CRT staff contact Ms. Lei's representative to provide more submissions about her claim for damages, but no response was received, despite multiple requests. Considering the CRT's mandate to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly, I find the CRT made sufficient efforts to collect more information from Ms. Lei without success.
31. In their submissions, the respondents say Ms. Lei attended 24 acupuncture treatments and visited her doctor once for accident-related injuries. The last acupuncture visit recorded was approximately 4 months after the accident. The respondents suggest a non-pecuniary damages award of \$1,500 is appropriate.
32. Given the lack of submissions and evidence by Ms. Lei in support of her claim for damages, I accept the respondents' submissions. I award Ms. Lei \$1,500 for non-pecuniary damages.

FEES, EXPENSES, AND INTEREST

33. The *Court Order Interest Act* (COIA) applies to the tribunal. Ms. Lei is entitled to pre-judgment interest under the COIA on her paid deductible from August 9, 2021, the date the deductible was paid, to the date of this decision. This equals \$2.20.
34. Section 2 of the COIA says pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses), which are discussed below.
35. 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 Ms. Lei was successful, I find 128 and Khushpinder Singh Grewal must reimburse her \$125 in tribunal fees.
36. Ms. Lei must reimburse Gurpartap Sandhu \$25 for their paid tribunal fees. I dismiss the other respondents' claim for fees.

ORDERS

37. Within 30 days of the date of this decision, I order the respondents, 1288275 B.C. Ltd. and Khushpinder Singh Grewal, to pay the applicant, Run Ai Lei, a total of \$1,927.20
- a. \$1,800 in damages,
 - b. \$2.20 in pre-judgment interest under the *Court Order Interest Act*,
 - c. \$125 as reimbursement for tribunal fees.
38. Within 30 days of the date of this decision, I order Ms. Lei to pay the respondent, Gurpartap Sandhu, a total of \$25 as reimbursement for tribunal fees.
39. Ms. Lei and Gurpartap Sandhu are each entitled to post-judgment interest as applicable.
40. Under section 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