



Civil Resolution Tribunal

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Amended Date Issued: September 15, 2022

File: VI-2021-005085

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Jiang v. Stock*, 2022 BCCRT 1012

B E T W E E N :

JIAN JIANG

APPLICANT

A N D :

SEAN STOCK, CRISTINA STOCK, and CITY OF VANCOUVER

RESPONDENTS

AMENDED REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on June 4, 2020 in Vancouver, British Columbia.

2. The applicant, Jian Jiang, was driving west on West King Edward Avenue (King Edward), straight through the intersection with Granville Street (Granville). At the same time, a Vancouver Police Department (VPD) officer was in the middle of the intersection directing traffic for the purpose of allowing a police escort to pass through the intersection. The respondent, Cristina Stock, was driving north on Granville and was directed to proceed through the intersection on a red light by the VPD officer. Ms. Jiang's vehicle and Ms. Stock's vehicle collided in the intersection, and Ms. Jiang says she was injured as a result.
3. The respondent, Sean Stock, owns the vehicle Ms. Stock was driving. The respondent, City of Vancouver (City), employs the VPD officer who was directing traffic in the intersection.
4. Ms. Jiang says the VPD officer was negligent for failing to gain and maintain control of the entire intersection when directing traffic. Ms. Jiang also says Ms. Stock was negligent for failing to keep a proper lookout while proceeding through a red light under the direction from a VPD officer. Ms. Jiang says the respondents are wholly responsible for the collision.
5. The respondents argue that Ms. Jiang is fully liable for the collision. They say that Ms. Stock was obligated to obey the directions of the VPD officer directing traffic, and that Ms. Jiang was driving without due care and attention. They say she should have noticed the officer in the intersection and that traffic was stopped in the lane beside her. The City also says that Ms. Jiang's claims against it are statute-barred because she failed to provide written notice of her claim within 2 months of the accident, as required under the *Vancouver Charter*.
6. Ms. Jiang seeks \$5,000 in non-pecuniary (pain and suffering) damages, \$11,538.46 in past income loss, and \$1,144.63 in out-of-pocket expenses.
7. Ms. Jiang is represented by her legal representative, JS [i]. The City is represented by an in-house lawyer, Kevin Nakanishi. The Stocks are represented by an employee

of their insurer, Insurance Corporation of British Columbia (ICBC). ICBC is not a party to this dispute.

JURISDICTION AND PROCEDURE

8. 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* (IVR). 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.
9. At the time Ms. Jiang 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.
10. 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. Jiang already consented to continuing her dispute at the CRT, nothing turns on the BCCA's decision.
11. 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.

12. Section 39 of the CRTA says 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.
13. 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

14. The issues in this dispute are as follows:
 - a. Are Ms. Jiang's claims against the City barred by the *Vancouver Charter*?
 - b. Who is responsible for the June 4, 2020 accident?
 - c. What damages, if any, is Ms. Jiang entitled to?

BACKGROUND, EVIDENCE, AND ANALYSIS

15. In a civil claim such as this, Ms. Jiang as the applicant must prove her case on a balance of probabilities, meaning "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

The Accident

16. The general circumstances of the collision are not in dispute. It occurred on June 4, 2020 at the intersection of King Edward and Granville. There are 3 northbound lanes and 3 southbound lanes on Granville, separated by a solid yellow line. King Edward has 2 eastbound and 2 westbound lanes, plus dedicated left turn lanes in each

direction. There is a grass boulevard separating eastbound and westbound traffic on King Edward. The intersection is controlled by a traffic light.

17. At the time of the collision, the VPD was conducting a traffic escort, which was heading north on Granville. The purpose of the escort was to clear the route for vehicles participating in a funeral for a VPD member. There were several VPD officers on motorcycles, called “outriders”, who each rode ahead of the escorted vehicles to control traffic in the upcoming intersections so the escorted vehicles would not have to stop. The parties also refer to the traffic escort as a “motorcade” in the evidence.
18. One VPD constable, TV, was acting as an outrider and was travelling ahead of the other outriders and the escorted vehicles. When TV arrived at the intersection of King Edward and Granville, he got off his motorcycle to start directing traffic.
19. Ms. Stock was also traveling north on Granville, amongst the motorcade. As she approached King Edward, TV was already in the intersection. Although the light for northbound traffic was red, TV waved for Ms. Stock to proceed through the intersection.
20. Ms. Jiang was travelling west on King Edward in the curb lane. She had a green light and says she did not see TV directing traffic, so she proceeded into the intersection where she collided with Ms. Stock.
21. There was also a TransLink bus traveling west on King Edward, ahead of Ms. Jiang. As the bus approached Granville, it moved into the dedicated left turn lane and came to a stop at the intersection. The bus had a dashcam that recorded the intersection in the moments before and during the collision, though Ms. Jiang’s vehicle and the collision itself were not captured in the video frame.
22. I turn first to consider the City’s position that Ms. Jiang’s claims against it are barred.

Are Ms. Jiang’s claims against the City barred by the Vancouver Charter?

23. It is undisputed that as the municipality appointing and employing VPD officers, the City is vicariously liable for negligence committed by those officers in the performance

of their duties under section 21 of the *Police Act*. However, before considering whether TV acted negligently in directing Ms. Stock through the intersection on a red light, the City says that Ms. Jiang's claims are barred by the notice provision in the *Vancouver Charter*.

24. Section 294(2) of the *Vancouver Charter* says that the City is not liable for damages unless written notice, setting out the time, place, and manner in which the damage has been sustained, is delivered to the City within 2 months from the date on which the alleged damage was sustained. It also says failure to give notice within 2 months is not a bar to the action if the applicant had a reasonable excuse and the City was not prejudiced by the late notice.
25. It is undisputed that Ms. Jiang's lawyer sent the City the required notice by letter dated January 26, 2021, which the City says it received on January 29, 2021. This is almost 8 months after the collision in which Ms. Jiang says she was injured. The City admits it was not prejudiced by the delay. The issue is whether Ms. Jiang has provided a reasonable excuse for failing to provide the required notice within 2 months.
26. In determining whether an applicant has a reasonable excuse for failing to give notice under the *Vancouver Charter*, the courts (and the CRT) must consider all the circumstances: see *Thauli v. Delta (Corporation)*, 2009 BCCA 455. In *Persall v. Bond*, 2009 BCSC 1001, the court set out several non-exhaustive factors to consider in determining whether there is a reasonable excuse, including: the applicant's knowledge of the obligation to provide notice, any actions of the municipality that lulled the applicant into a false sense of security, the applicant's awareness of the seriousness of their injuries, the applicant's awareness of the municipality's involvement in the matter, and the applicant's capacity to give notice.
27. Ms. Jiang says she did not discover the City's potential liability for the collision until her lawyer concluded their investigation on January 13, 2021. She says this investigation entailed reviewing materials obtained through Freedom of Information requests from ICBC, the VPD, and TransLink. Specifically, in a February 1, 2021 email to the City, Ms. Jiang's lawyer stated it was after reviewing the dash cam video

from the TransLink bus that they discovered the VPD's alleged negligence. It is unclear exactly when they received the disclosure from TransLink, but I infer January 13, 2021 was the date they viewed the dash cam video.

28. I accept Ms. Jiang's evidence that she did not have a clear recollection of the collision or how it occurred, and that she may not have been immediately aware of the VPD's involvement and potential negligence. However, for the following reasons, I find Ms. Jiang knew or should have known she had a potential claim against the City well before she provided the required notice on January 29, 2021.
29. ICBC's file notes show Ms. Jiang's adjuster was aware by July 2, 2020 that Ms. Stock reported she was driving on the directions of a VPD officer at the time of the collision. Ms. Jiang admits in her reply submissions that ICBC told her she should pursue a claim against the City and that there was a notice requirement to do so, but she says she did not have any evidence at the time of the VPD's negligence.
30. ICBC ultimately advised Ms. Jiang that she was held 100% liable for the collision on August 14, 2020. I find Ms. Jiang knew by that time that Ms. Stock reported she was waved through the intersection by a police officer. Ms. Jiang sought to dispute ICBC's liability finding, and she later hired a lawyer on about September 25, 2020.
31. The evidence shows that ICBC responded to the disclosure request from Ms. Jiang's lawyer in a letter dated November 19, 2020. On page 2 of ICBC's letter, Ms. Stock's description of the accident is set out, as recorded by ICBC, and it states that there was a police motorcade travelling north on Granville and that Ms. Stock said she had been waved through the intersection by an officer directing traffic.
32. Considering the whole of the circumstances, while Ms. Jiang might not have had convincing evidence of the VPD officer's alleged negligence until her lawyer received TransLink's dashcam video, I find that she had sufficient awareness of the City's potential involvement in the matter in July 2020, given ICBC admittedly told her that she had a claim against the City.

33. Further, I find Ms. Jiang's lawyer knew Ms. Stock had reported to ICBC that a VPD officer waved her through the intersection, when they received ICBC's November 19, 2020 letter. Ms. Jiang provided no explanation for her or her lawyer's failure to provide notice to the City once they received that disclosure.
34. For these reasons, I find Ms. Jiang has not shown she had a reasonable excuse for the delay in providing the required written notice of her claim to the City. Therefore, I find Ms. Jiang's claims against the City are barred under section 294(2) of the *Vancouver Charter*. I dismiss Ms. Jiang's claims against the City.

Who is responsible for the accident?

35. Even though I have dismissed Ms. Jiang's claims against the City, I find it is still necessary to determine each party's level of responsibility for the accident, to properly assess whether Ms. Jiang is entitled to any damages.
36. First, I consider TV's responsibility.
37. In a signed statement filed in evidence, TV stated that he arrived at the intersection of Granville and King Edward ahead of the other motorcade outriders and escorted vehicles. When he entered the intersection, he stated he activated his motorcycle's siren to sound several short bursts, and then stopped at approximately the centre of the intersection while blowing several bursts on his whistle. TV stated that he saw all traffic approaching the intersection was stopping, so while still at the centre of the intersection, he dismounted his motorcycle to continue directing traffic. He stated that his motorcycle's emergency lights were activated throughout.
38. TV specifically stated that he confirmed all northbound and southbound traffic on Granville had stopped, all eastbound and westbound traffic on King Edward had also stopped, and that the curb lane for westbound traffic was empty. However, while TV stated that he believed the intersection was controlled by his actions and presence, I find the TransLink dashcam video shows otherwise.

39. The TransLink video shows TV still on his motorcycle and coming to a stop in the middle of the intersection before the bus enters the dedicated left turn lane. The light for westbound traffic on King Edward is already green at that time. As the bus continues towards the intersection in the left turn lane, TV is heard blowing his whistle. He dismounts his motorcycle and immediately turns to face south towards northbound traffic, positioned behind his motorcycle. The bus is the first vehicle in the westbound left turn lane, and there are 5 vehicles stopped in the westbound lane to the bus's immediate right. There are no vehicles stopped in the westbound curb lane.
40. The video shows that TV continues blowing his whistle and gestures vigorously for a vehicle travelling northbound to proceed through the intersection. As he is doing so, a black vehicle travels through the intersection in the westbound curb lane, behind TV. The northbound vehicle that TV is waving through then enters the left side of the video frame, travelling straight through the intersection in what appears to be the middle lane. Immediately after the northbound vehicle exits the right side of the video frame, a collision can be heard occurring, which is again, behind TV. It is undisputed that Ms. Stock was driving the northbound vehicle, and that she collided with Ms. Jiang, who entered the intersection from the westbound curb lane. The video shows that the light for westbound traffic was still green when the collision occurred.
41. Based on the TransLink video, I accept that TV confirmed eastbound traffic on King Edward had stopped, and that westbound traffic in the dedicated left turn lane and the left through lane had also stopped. However, I find TV did not confirm the westbound curb lane was "empty". I acknowledge there were no vehicles stopped in the curb lane when TV got off his motorcycle, so the curb lane could be described as "open". However, given the presence of the bus in the left lane as it approached Granville, and TV's position in the middle of the intersection, I find it is unlikely TV had a clear view of the westbound curb lane. There obviously were, in fact, vehicles approaching Granville in the curb lane, as the black car went through the intersection in the curb lane just before Ms. Jiang also entered the intersection in the curb lane.

42. The City argues that TV was authorized to direct traffic in and around the intersection under section 123 of the *Motor Vehicle Act* (MVA) and section 5 of the City's Street and Traffic By-law No. 2849 (Bylaw 2849). I agree that TV was so authorized. However, the question is whether his actions while directing traffic were negligent.
43. To prove negligence, Ms. Jiang must show that 1) TV owed her a duty of care, 2) TV breached the standard of care, 3) TV's breach caused Ms. Jiang to suffer a loss, and 4) the loss was reasonably foreseeable: see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
44. It is undisputed that TV owed Ms. Jiang a duty of care, as she was a driver approaching an intersection in which TV was directing traffic. The question is whether TV breached the standard of care.
45. Generally, in claims of professional negligence, an applicant must prove a breach of the standard of care through expert opinion evidence. For example, in *Bergen v. Guliker*, 2015 BCCA 283, the Court of Appeal decided that expert evidence was required to determine whether a police officer acted reasonably in a vehicle pursuit. However, there are exceptions to the requirement for expert evidence, including when the alleged breach relates to something non-technical and within the experience of an ordinary person, or when the breach is so egregious that it is obvious: see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196.
46. I accept TV's statement that his objective as an outrider for the escort was to control traffic in the intersection, so to provide a clear and continuous path for the other outriders and the escorted vehicles. To meet this objective and control traffic in the intersection, I find the standard of care required TV to reasonably ensure all traffic approaching a green light would come to a stop so that he could safely direct vehicles through the relatively large intersection against a red light.
47. The TransLink video shows that at no time after dismounting his motorcycle, did TV look to check whether traffic had stopped in King Edward's westbound curb lane. I find TV was completely unaware that the black car went through the intersection

behind him in the westbound curb lane. While the video confirms that TV's motorcycle emergency lights were on, given its position in the intersection, I find drivers in the curb lane would not obviously be able to see the motorcycle or its lights. I also find drivers in the curb lane would not obviously see TV or hear his whistle as they approached the intersection. Overall, I find that TV did not gain full control of the intersection as he intended and believed he had done.

48. I acknowledge that the standard of care does not require perfection and that police officers can make minor errors in judgment with unfortunate results, without breaching the standard of care: see *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41 at paragraph 73. However, noting that TV was aware that westbound traffic on King Edward had a green light when he was waving Ms. Stock northbound through the intersection, I find his failure to confirm whether there were any vehicles approaching in the westbound curb lane was an obvious breach of the standard of care. I find TV's breach contributed to the collision between Ms. Stock and Ms. Jiang, and that he bears some responsibility for it.

49. I turn next to consider Ms. Stock's responsibility.

50. There is a July 6, 2021 type-written statement signed by Ms. Stock in evidence. In the statement, Ms. Stock said she was driving northbound on Granville and there were several police officers on motorcycles also travelling in the same direction. She said they were initially travelling behind her, but they passed her one-by-one, so they were all travelling ahead of her by the time she reached King Edward. She stated that she noticed TV directing traffic in the middle of the intersection, and she saw at least 2 of the officers ahead of her pass through the intersection on a solid red light. She said she was slowing down for the red light, but TV waved for her to proceed, so she continued. She said her vehicle was just halfway through the intersection when it was struck on the passenger side.

51. Overall, I place very little weight on Ms. Stock's account of the accident because I find it is inconsistent with the video evidence. I find the video shows that Ms. Stock was the first vehicle that TV waved through the intersection after dismounting his motorcycle, and that all the other VPD officers on motorcycles were behind Ms. Stock. This is also consistent with TV's statement. I also find that Ms. Stock was well past halfway through the intersection when the collision occurred, since Ms. Jiang was in the westbound curb lane, and it is undisputed that Ms. Jiang collided with the rear half of Ms. Stock's vehicle.
52. Nevertheless, I find all the other evidence supports Ms. Stock's submission that she proceeded through the intersection against the red light at TV's direction.
53. Section 123 of the MVA says that if a peace officer reasonably considers it necessary to ensure orderly movement of traffic, the officer can direct traffic according to their discretion and everyone must obey their directions. Similarly, section 141.2(2) of the MVA says that if there is a traffic control person controlling movements of traffic on a highway, a person must obey the directions of the traffic control person.
54. Section 5 of Bylaw 2849 referenced above, also says that everyone must always comply with any lawful order, direction, signal, or command made or given by a police officer in the performance of the officer's duty in directing or regulating traffic. It also says that when directing traffic, police officers can disregard traffic-control signals.
55. Based on the above provisions, I accept that Ms. Stock was obligated to follow TV's directions to proceed through the intersection against a red light. However, I find that does not mean that Ms. Stock could proceed blindly through the intersection, without regard for the other circumstances around her.
56. Section 144 of the MVA says a person must not drive on a highway without due care and attention, without reasonable consideration for others using the highway, or at a speed that is excessive relative to the road, traffic, visibility, or weather conditions.
57. Ms. Jiang argues that had Ms. Stock been driving with due care and attention, she would have seen the black vehicle travel through the intersection westbound in the

curb lane, behind TV. The video evidence shows the black vehicle crossed the intersection only 2 to 3 seconds before Ms. Stock entered the intersection herself. Ms. Stock does not mention the black car in any of her evidence or submissions. There is no suggestion that anything might have obstructed Ms. Stock's view of the intersection as she approached it. Overall, I find Ms. Stock should have seen the black vehicle cross the intersection.

58. Further, I find that a reasonably prudent driver who is the first in line to travel through an intersection on a red light, even at a police officer's direction, would proceed very cautiously. While it is impossible to determine from the video evidence Ms. Stock's exact speed while she travelled through the intersection, I would not describe it as slow or cautious, and it appears that she maintained a consistent speed.
59. As noted above, TV was positioned behind his motorcycle, and so he was somewhat before the middle point of the intersection while facing northbound traffic and waving Ms. Stock through the intersection. I agree with Ms. Jiang that Ms. Stock should have recognized that TV had his back to eastbound traffic, and he could not see whether it was "controlled". I find that as Ms. Stock proceeded through the intersection, she should have slowed down to confirm that the westbound lanes of traffic were stopped, given they had a green light. This is particularly so for the "open" curb lane.
60. For these reasons, I find Ms. Stock was not driving with the care and attention the circumstances required, in breach of section 144 of the MVA. I find her actions fell below the standard of a reasonably prudent driver and that she also bears some responsibility for causing the collision.
61. Finally, I turn to consider Ms. Jiang's responsibility.
62. I find the evidence supports Ms. Jiang's submission that she had a green light as she approached the intersection. She says she was following the black vehicle and saw that it had passed through the intersection unobstructed. I find the video evidence shows the black vehicle entered the intersection 4 to 5 seconds ahead of Ms. Jiang. I also accept Ms. Jiang's submission that she did not see TV, his motorcycle or its

lights in the intersection because her view was obstructed by the vehicles in the lane beside her and trees in the grass boulevard. I also accept that she did not hear TV blowing his whistle.

63. However, before entering the intersection, Ms. Jiang passed a line of at least 5 vehicles that were stopped in the lane to her left, even though they had a green light.
64. Section 158(2) of the MVA says that a driver of a vehicle must not overtake and pass another vehicle on the right when the movement cannot be made safely. I also find that section 144 of the MVA, discussed above, applies.
65. The courts have considered MVA section 158(2) in the context of left turns, where a through driver in the curb lane passes stopped vehicles on their left and encounters a left-turning vehicle in the intersection. In such cases, the left-turning driver generally has a high onus to show it was safe to start their turn. However, it remains open to the left-turning driver to establish that the through driver was nevertheless negligent and contributed to the accident.
66. For example, in *Kirby v. Loubert*, 2018 BCSC 498, a straight-through driver in the curb lane collided with a left-turning driver in the intersection after passing vehicles that were stopped in the 2 lanes to their left. The court found that stopped traffic to the left of a driver in the curb lane calls for caution about what might be occurring in the intersection. The court found the straight-through driver 25% liable.
67. Considering all the circumstances, I find that Ms. Jiang failed to drive with due care and attention when she passed a line of stopped vehicles on her left without any attempt to determine why they were not proceeding through the green light. Ms. Jiang does not say that she slowed down at all to assess the situation as she approached the intersection.
68. I acknowledge that Ms. Jiang was following the black vehicle in front of her, and that it passed through the intersection without incident. However, I find that alone was insufficient for Ms. Jiang to proceed without regard to what might be occurring in the intersection, given the stopped traffic beside her. I find Ms. Jiang's driving also fell

below the expected standard of a reasonably careful driver, and that she bears some responsibility for the accident.

69. As I have found all 3 parties were negligent, I must apportion liability based on the degree to which each party is at fault.
70. The City referred to the decisions in *Blackburn v. R.*, 2001 BCSC 1076 and *Wallace v. Hasenpflug*, 1996 CanLII 1546, which both involved police officers driving through an intersection on a red light while responding to an emergency, and colliding with a through driver with a green light. In both cases, the officer was assessed 20% liable and the through driver was found 80% liable. However, I find these decisions are distinguishable because the standard of care is different when an officer is responding to an emergency. The courts also found that other factors contributed to the through drivers' responsibility, including that they should have seen the officer's emergency lights or heard the siren, which I find are not relevant factors here.
71. Overall, I find TV's actions in directing Ms. Stock through the intersection against a red light when he had not sufficiently controlled the intersection were significantly more blameworthy than either Ms. Stock's or Ms. Jiang's negligence.
72. I find that TV is 60% responsible for the collision, and that Ms. Stock and Ms. Jiang are each 20% responsible.
73. I turn now to Ms. Jiang's claimed damages.

Non-Pecuniary Damages

74. As noted, Ms. Jiang says she was injured as a result of the accident, and she claims \$5,000 for her non-pecuniary (pain and suffering) damages. The Stock respondents do not dispute that Ms. Jiang was injured, but the City denies that Ms. Jiang suffered any injuries. I find the evidence discussed below supports Ms. Jiang's claim that she was injured, and so I will consider her claimed damages.

75. I note that Ms. Jiang does not expressly admit that her injuries are “minor injuries” as defined in section 101 of the IVA. However, given that her claim for non-pecuniary damages falls within the minor injury cap, I find I do not have to determine whether her injuries are in fact “minor injuries”.
76. Ms. Jiang did not submit any medical records of her injuries. However, ICBC provided a copy of Ms. Jiang’s initial physiotherapy report dated June 10, 2020, which states that she suffered soft tissue injuries to her neck and shoulders, and that she had pre-existing chronic low back pain that became worse after the collision. The report also noted that Ms. Jiang experienced dizziness on the day of the collision, and that she was having difficulty with prolonged sitting. The report notes that she had missed some work, but that she had returned at modified duties.
77. ICBC’s records also show that Ms. Jiang’s physiotherapist requested an extension of treatment on September 1, 2020. The physiotherapist noted that Ms. Jiang’s neck was still very tense, and that her neck and upper back injuries were often causing headaches. In a further November 4, 2020 extension request, the physiotherapist noted Ms. Jiang’s multiple sprains in her neck and upper back were causing pain into both shoulders, and she was experiencing ongoing exacerbation of lower back pain. At that time, her physiotherapist requested an additional 26 sessions with an anticipated discharge from treatment on September 30, 2021.
78. It is undisputed that Ms. Jiang attended 19 physiotherapy sessions and 2 massage therapy sessions between June 6 and December 23, 2020. Ms. Jiang also provided payment statements showing that she attended an additional 10 physiotherapy sessions between January 13 and June 18, 2021. I accept that all of these attendances were related to treatment of Ms. Jiang’s accident-related injuries, as the respondents do not specifically dispute it and there is no evidence to the contrary.
79. Ms. Jiang submits that as a business owner, her injuries “greatly inconvenienced” her. She also says she continues to suffer from pain in her neck and shoulders, and that she experiences fear while driving.

80. The Stocks suggest that \$2,500 is an appropriate award for Ms. Jiang's non-pecuniary damages, but they did not provide any reasoning for why that amount is appropriate. The City says Ms. Jiang's damages claim should be dismissed for lack of proof because she did not provide a formal statement detailing her injuries.
81. I find that Jiang's submissions in this dispute and her physiotherapist's notes to ICBC are sufficient to conclude that Ms. Jiang suffered injuries to her neck and shoulder, and an aggravation of pre-existing low back pain. I find those injuries substantially recovered within about 12 months, though I accept she may continue to experience some mild symptoms. Further, given the accident circumstances, I also accept Ms. Jiang's submission that she has experienced some mild anxiety with driving since the accident, particularly when entering intersections. Overall, I find an award of \$5,000 for non-pecuniary damages, as sought by Ms. Jiang, is appropriate here.
82. Given that I have found Ms. Jiang 20% responsible for the accident and that her claim against TV must be dismissed, it follows that Ms. Jiang is only entitled to 20% of her non-pecuniary damages award, representing Ms. Stock's percentage of liability. Therefore, I find Ms. Jiang is entitled to \$1,000 in non-pecuniary damages for her pain and suffering.

Past Income Loss

83. Ms. Jiang claims \$11,538.46 for past income loss, based on allegedly missing work for approximately 2 weeks after the accident.
84. The only evidence Ms. Jiang provided in support of her claim was her 2020 Notice of Assessment showing a total income of \$355,492. She did not explain what her business is or how her income is generated from that business. She provided no business records and no evidence showing that her alleged absence resulted in any loss to either the company or her income. Further, given the initial physiotherapy report indicates that Ms. Jiang was working with modified duties 6 days after the accident, I find she has not established that she missed 2 weeks of work, as claimed.

85. I find Ms. Jiang has simply provided insufficient evidence to prove she lost any income as a result of the accident. I dismiss her claim for past income loss.

Out-of-Pocket Expenses

86. Ms. Jiang claims \$1,144.63 for special damages (out-of-pocket expenses), related to physiotherapy treatments she paid for that were not reimbursed through her first-party insurance with ICBC.

87. The total amount Ms. Jiang paid for physiotherapy treatments, as shown in the 3 payment statements in evidence, was \$1,739.98. ICBC (on behalf of the Stocks) says that it reimbursed Ms. Jiang \$595.35 on March 25, 2021, which it says was the amount she was entitled to under her first-party insurance. Ms. Jiang does not dispute this, so I find her \$1,144.63 claim is based on the \$1,739.98 she paid, less the \$595.35 reimbursement she received from ICBC.

88. ICBC says the amount Ms. Jiang claims is made up of “user fees” and her last 5 physiotherapy sessions between April 7 and June 18, 2021, which it says were not reimbursed at all. Again, Ms. Jiang does not dispute this.

89. ICBC says “user fees” are not claimable under the IVA.

90. Regulation 88(1) and Schedule 3.1 of the *Insurance (Vehicle) Regulation* (IVR) set out the prescribed amounts for certain “health care loss” expenses, which includes physiotherapy treatments. These prescribed amounts are what ICBC is obligated to reimburse individuals for approved treatment under their first-party insurance, even if the treatment cost more than the prescribed amount. The amount paid over the prescribed amount is generally referred to as a “user fee”.

91. Section 82.2(2) of the IVA says that a person may not recover an amount that is more than the amount established or determined for the particular health care loss under the IVR. I find that the effect of this section is that applicants such as Ms. Jiang are not entitled to claim “user fees” as damages, as they are limited to recovery of only

the prescribed amount. Therefore, I dismiss Ms. Jiang's claim for out-of-pocket expenses, as it relates to "user fees" paid for her physiotherapy treatments.

92. As for Ms. Jiang's claim for reimbursement of her last 5 physiotherapy treatments, ICBC says it did not reimburse the prescribed amount for those treatments because Ms. Jiang did not receive its authorization for those treatments.

93. Section 83(2) of the IVA says that a person who received or is entitled to receive "benefits" for injuries related to a motor vehicle accident is deemed to have released their claim for the value of those benefits. This means that if an injured person receives or is entitled to "benefits", they cannot claim those benefits from another person in a motor vehicle claim.

94. Section 83(1)(a) defines "benefits" as including benefits under Part 1 of the IVA, which deals with universal compulsory vehicle insurance through ICBC. It is undisputed that Ms. Jiang was entitled to receive benefits for physiotherapy treatments through her first-party insurance under Part 1 of the IVA. So, I find she cannot claim the prescribed amount of those benefits (as set out in the IVR) in this dispute.

95. I find Ms. Jiang's claim for reimbursement of her last 5 physiotherapy treatments is essentially a claim that ICBC failed to pay for physiotherapy treatment benefits she was entitled to receive under her first-party insurance, which is a dispute between her and ICBC as her insurer. As ICBC is not a party to this dispute, I find it would be inappropriate to make any findings about this issue.

96. For all the above reasons, I dismiss Ms. Jiang's claim for out-of-pocket expenses.

Summary

97. In summary, I find Ms. Jiang is entitled to an award of \$1,000 for non-pecuniary (pain and suffering) damages, payable by the Stocks.

FEES, EXPENSES AND INTEREST

98. Section 2 of the *Court Order Interest Act* says that pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, so I make no order for interest.
99. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their CRT fees and dispute-related expenses. I find Ms. Jiang was partially successful in her claim against the Stocks. So, I find she is entitled to reimbursement of half of her CRT fees from the Stocks, which is \$87.50. I also find the Stocks are entitled to reimbursement of half of their \$50 in CRT fees, which is \$25. The net effect is that the Stocks must pay Ms. Jiang \$62.50 in CRT fees.
100. I find the City was successful in its defence of Ms. Jiang's claim, and so I find Ms. Jiang must reimburse the City \$25 for its CRT fees.
101. None of the parties claimed any dispute-related expenses.

ORDERS

102. Within 30 days of the date of this decision, I order the respondents, Sean Stock and Cristina Stock, to pay Ms. Jiang a total of \$1,062.50, broken down as follows:
- a. \$1,000 in non-pecuniary damages, and
 - b. \$62.50 in CRT fees
103. Within 30 days of the date of this decision, I order Ms. Jiang to pay the respondent, City of Vancouver, \$25 as reimbursement for CRT fees.
104. Ms. Jiang and the City are also entitled to post-judgment interest on their respective awards under the *Court Order Interest Act*.
105. I dismiss Ms. Jiang's claims against the City and her remaining claims against Sean and Cristina Stock.

106. 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.

Kristin Gardner, Tribunal Member

Amendment Notes:

[i] Paragraph 7 has been amended under section 64 of the *Civil Resolution Tribunal Act* to correct an accidental reference to a non-lawyer representative by name, rather than initials.