



# Civil Resolution Tribunal

Date Issued: October 11, 2022

File: VI-2020-006304

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Muker v. Young*, 2022 BCCRT 1111

B E T W E E N :

DEEPIK MUKER

**APPLICANT**

A N D :

MICHAEL YOUNG

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on April 14, 2020, in Surrey, BC. Deepik Muker rear-ended Michael Young in an intersection. Mr. Muker says that the accident was entirely Mr. Young's fault because Mr. Young stopped while turning right from the middle lane of 100<sup>th</sup> Avenue onto King George Boulevard.

The right lane was undisputedly blocked by an RCMP vehicle. Mr. Muker claims \$5,500 in non-pecuniary (pain and suffering) damages for injuries from the accident and \$300 for the deductible he paid to fix his vehicle. Mr. Muker is self-represented.

2. Mr. Young says that Mr. Muker was following him too closely and was not paying close enough attention to the road. He says that the accident was Mr. Muker's fault. He asks me to dismiss Mr. Muker's claims. Mr. Young is represented by an Insurance Corporation of British Columbia (ICBC) employee.

## **JURISDICTION AND PROCEDURE**

3. 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* (ACR) give the CRT jurisdiction over the determination of liability and damages claims, up to \$50,000.
4. When Mr. Muker filed his CRT dispute, there was an ongoing legal challenge about whether section 133(c) of the CRTA was constitutional. On March 2, 2021, the BC Supreme Court declared it unconstitutional. On April 8, 2021, the BC Court of Appeal ordered a partial stay of that order, which allowed the CRT to continue resolving claims under section 133(c) while the appeal was ongoing. On May 12, 2022, the BC Court of Appeal overturned the BC Supreme Court's decision. This means that the CRT retains jurisdiction to resolve claims under section 133(c) of the CRTA.
5. 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.
6. Mr. Muker requested an in-person hearing. 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. Section 39(3) of the CRTA says that the CRT may hold an in-person hearing if doing so is necessary in the interests of justice. I recognize that in some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In some circumstances, issues around credibility and reliability can justify an oral hearing in a CRT dispute. See *Kang v. Nielsen*, 2021 BCCRT 879.

7. However, the CRT's mandate also includes proportionality and a speedy resolution of disputes. Here, the monetary stakes are relatively low. Mr. Muker does not specify why an in-person or other oral hearing is necessary. He simply says that he wants the opportunity to "fully review and present evidence". I find that Mr. Muker provided detailed submissions and relevant evidence. There is clear video footage of the accident. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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.
9. I note that Mr. Muker made some arguments about the adequacy of ICBC's investigation. ICBC is not a party to this dispute, so I find that the only issue before me is who is responsible for the accident.

## ISSUES

10. The issues in this dispute are:
  - a. Who was responsible for the accident?
  - b. If Mr. Young was fully or partially responsible, what are Mr. Muker's damages?

## **BACKGROUND**

11. In a civil claim such as this, Mr. Muker as the applicant must prove his case on a balance of probabilities. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. I start with the undisputed background facts. The accident occurred on April 14, 2020, at around 7:10 pm. Road conditions were dry and the sun was still up. Both parties were driving west on 100<sup>th</sup> Avenue in Surrey. 100<sup>th</sup> Avenue has 2 through lanes and a left turn lane at King George Boulevard. Mr. Muker rear-ended Mr. Young in the middle lane of 100<sup>th</sup> Avenue. Mr. Young was stopped at the time, waiting to turn right onto King George Boulevard. An RCMP vehicle was parked along the northeast curb of the intersection, blocking the right lanes of both 100<sup>th</sup> Avenue and King George Boulevard.
13. ICBC internally determined that Mr. Muker was 100% liable for the accident. ICBC's decision is not binding on me.
14. Mr. Muker's car was damaged on the right side of the front bumper. The total repair cost was \$1,550.56, subject to a \$300 deductible. Mr. Young's car was damaged on the left side of the rear bumper.
15. Again, none of the above is disputed.

## **EVIDENCE AND ANALYSIS**

16. According to ICBC's notes, Mr. Muker spoke to an ICBC adjuster 4 times in April 2020. ICBC's notes for each conversation are brief, but they record the following details. Mr. Muker said that Mr. Young had been in 100<sup>th</sup> Avenue's right lane and swerved left into the middle lane without signalling to avoid the RCMP vehicle. Mr. Muker said that Mr. Young was half in each of the middle and right lanes when Mr. Young slammed on his brakes. He said that Mr. Young's sudden movement caused the accident because Mr. Muker had to try to stop immediately.

17. In his initial report to ICBC, Mr. Young said that he was in the middle lane because of the RCMP vehicles. He said that he had his signal on and stopped to wait for a pedestrian to finish crossing when Mr. Muker hit him.
18. Neither party provided a more detailed statement for this dispute. In his submissions, Mr. Young essentially maintains his original account. Based on Mr. Muker's arguments, I find that he no longer alleges that Mr. Young swerved in front of him or slammed on his brakes, as he initially alleged. I find that this is likely because he had not yet seen the video footage of the accident, which contradicts his initial account.
19. There are 2 traffic camera videos taken from different directions that both show the accident. One camera is directed northeast, facing westbound traffic as it approaches the intersection. The other is directed west from 100<sup>th</sup> Avenue well back of the intersection, showing westbound traffic from the back as it approaches the intersection. Where necessary, I will refer to the cameras as the northeast camera and the west camera based on the directions they face. Together, I find that these 2 videos together clearly show how the accident happened. I find that they are conclusive evidence of fault in the accident. I will therefore discuss this evidence in some detail.
20. About a minute before the accident, 2 RCMP vehicles stop at the northeast corner of the intersection. One parks in King George Boulevard's right northbound lane. The other parks at the northeast curb, partially blocking 100<sup>th</sup> Avenue's right lane. The RCMP officers get out of their vehicles to interact with a person on the sidewalk, leaving their vehicles parked with the lights flashing.
21. When the RCMP vehicles stop, 100<sup>th</sup> Avenue's light is red. When it turns green about 40 seconds later, there are 5 vehicles stopped in 100<sup>th</sup> Avenue's middle lane and none in the right lane. The fifth car is Mr. Young. He stops for about 5 seconds before traffic in front of him begins to move.
22. As soon as traffic begins moving, Mr. Young signals right. Mr. Young does not accelerate much and slowly approaches the intersection. When he is in the

crosswalk, he begins turning but promptly stops, so his car was only slightly angled to the right. There is a pedestrian crossing 100<sup>th</sup> Avenue, which corroborates Mr. Young's evidence that he stopped for a pedestrian.

23. Mr. Muker's car enters the frame in the west video just before Mr. Young crosses the stop line at the intersection, about 6 seconds after Mr. Young started moving from the red light. In other words, there was a 6 second gap in traffic between Mr. Young and Mr. Muker. When Mr. Muker's car enters the frame, he is driving faster than Mr. Young. As he approaches Mr. Young, Mr. Muker's brake lights come on, but he does not appear to slow down much until the moment before the collision. Just as Mr. Young stops for the pedestrian, Mr. Muker's hits him from behind.

### ***Who was responsible for the accident?***

24. As a general principle, drivers must pay proper care and attention and must reasonably consider other users of the road. This standard of care is informed in large part by the rules of the road found in the *Motor Vehicle Act* (MVA). However, the MVA is not a complete code of how drivers must behave because it cannot anticipate every situation. When confronted with an unusual or unexpected circumstance, drivers must use good judgment and react reasonably.
25. Specific to this dispute, section 162 of the MVA prohibits following "more closely than is reasonable and prudent". The law generally infers that the rear driver in a rear-end collision is liable unless they can prove otherwise. This is because rear drivers must leave enough room so that they can safely react to unexpected stops. However, Mr. Muker correctly points out that rear-end collisions are not automatically the rear driver's fault.
26. Mr. Muker relies on *Cue v. Breitkruz*, 2010 BCSC 617. In that case, the court found the following driver in a rear-end collision was not negligent because the other driver had changed lanes immediately in front of him and then stopped, providing the following driver no reasonable opportunity to slow down or avoid the collision.

27. Mr. Muker also relies on *Chauhan v. Welock*, 2020 BCSC 1125. In that case, the front driver stopped unexpectedly and for no sensible reason at an intersection even though she had a green light. The court said that rear drivers are only required to anticipate and react to reasonably foreseeable risks and cannot anticipate everything. The court also said that drivers must adapt their driving to changing circumstances on the road. The court found that the front driver's decision to stop was unforeseeable and unreasonable, and found her fully responsible for the accident.
28. I find that the circumstances here are different than in *Cue* and *Chauhan*. I find that Mr. Young's vehicle was there to be seen for at least 6 seconds before Mr. Muker hit him. I acknowledge that Mr. Young was turning right from the middle lane, which is unusual and was likely unexpected. However, I find that the 2 RCMP vehicles and their flashing lights were clearly visible to Mr. Muker as he approached the intersection. I find that a reasonable driver approaching an intersection where there are 2 RCMP vehicles stopped with lights flashing would proceed with extra caution. I further find that Mr. Muker should have noticed that they blocked the right lane. With that, Mr. Muker should have realized that Mr. Young (whose right signal was on) would have to turn right from the middle lane. I find that Mr. Muker had ample time to make these observations and adjust his driving accordingly.
29. I therefore find that Mr. Muker's conduct fell below the standard of a reasonable driver. I find that he acted unreasonably by failing to slow down well in advance of the intersection. I find that if he had done so, he would have been able to safely stop when Mr. Young stopped his right turn to wait for the pedestrian. I find that Mr. Muker was negligent.
30. I turn then to the question of whether Mr. Young was also negligent.
31. Mr. Muker first relies on section 186 of the MVA, which requires drivers to stop before the stop line when approaching a stop sign. Mr. Muker says that Mr. Young failed to stop at the stop line before entering the intersection to turn right. I find that this is true, but irrelevant because Mr. Young was facing a green light, not a stop sign. I find that he was entitled to proceed into the intersection without stopping first.

32. Mr. Muker's primary argument is based on Mr. Young's decision to turn right from the middle lane. Section 165(1) of the MVA says that a right-turning driver must approach the intersection and turn "as close as practicable to the right hand curb". I agree with Mr. Muker that this generally means that a driver must be in the right lane when turning right. However, it is unclear how Mr. Muker expected Mr. Young to turn right from the right lane when it was undisputedly blocked by an RCMP vehicle. I find that Mr. Young had no other "practicable" option but to turn from the middle lane. In other words, I find that he was as close as practicable to the right curb, as required by section 165(1) of the MVA. I also find that the video footage shows that Mr. Young had to stop when he did because it was unsafe for him to complete his right turn until the pedestrian had crossed the street. I find that Mr. Young reacted reasonably to the somewhat unusual circumstances on the road.
33. I therefore find that Mr. Young was not contributorily negligent. Because I have found Mr. Muker fully responsible for the accident, I do not need to consider his evidence or submissions about his alleged damages. I dismiss his damages claim.

## **FEES AND EXPENSES**

34. 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. Mr. Muker was not successful, so I dismiss his claims for CRT fees and dispute-related expenses. I also order Mr. Muker to pay Mr. Young \$25 in CRT fees. Mr. Young did not claim any dispute-related expenses.

## **ORDERS**

35. Within 30 days of the date of this decision, I order Mr. Muker to pay Mr. Young \$25 in CRT fees.
36. Mr. Young is entitled to post-judgment interest under the *Court Order Interest Act*.
37. I dismiss Mr. Muker's claims.

38. 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.

---

Eric Regehr, Tribunal Member