



Civil Resolution Tribunal

Date Issued: October 19, 2022

File: VI-2021-008129

Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Chan v. Winters*, 2022 BCCRT 1144

BETWEEN:

SHEK CHAN

APPLICANT

AND:

JULIA MADOLYN-HENRY WINTERS and INSURANCE
CORPORATION OF BRITISH COLUMBIA

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 23, 2019 in North Vancouver, British Columbia.

2. The applicant, Shek Chan, was southbound turning left in an intersection while the respondent, Julia Madolyn-Henry Winters, was driving northbound straight through the intersection. The two vehicles collided.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures both individual parties and found Mr. Chan 100% responsible for the accident. Mr. Chan says Ms. Winters should be held solely responsible for the accident. Ms. Winters says Mr. Chan entered the intersection on a red light and caused the accident.
4. Mr. Chan says he was injured as a result of the accident. He seeks non-pecuniary (pain and suffering) damages, special damages (out-of-pocket expenses), compensation for his damaged vehicle, and compensation for increased insurance premiums. Mr. Chan initially claimed \$2,518.88 although the parties may have come to some agreement since. However, nothing turns on the particular amount claimed given my conclusions below.
5. Mr. Chan represents himself. An ICBC employee represents both Ms. Winters and ICBC.

JURISDICTION AND PROCEDURE

6. 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.
7. At the time the applicant 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 The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect.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 the applicant 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 CRT'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.

Claims against ICBC

12. Mr. Chan named ICBC as a party to this dispute. However, apart from disagreeing with ICBC's internal fault assessment, Mr. Chan did not make any specific allegations against ICBC, or seek any remedy from it.
13. Under section 133(1)(c) of the CRTA, the CRT has jurisdiction to decide liability and damages in accident claims, up to \$50,000. Claims under section 133(1)(c) are claims in negligence, properly brought against the other parties involved in the accident (here, Ms. Winters). To the extent Mr. Chan is suing ICBC as his insurer for breaching its statutory obligations or its contract of insurance, the CRT does not have jurisdiction under its accident claims jurisdiction to decide such a claim, but it may fall within the CRT's small claims jurisdiction, subject to the CRT's small claims monetary limit. However, given Mr. Chan made no specific allegations and sought no remedy from ICBC, I dismiss Mr. Chan's claims against ICBC.

ISSUES

14. The issues in this dispute are:
 - a. Who is responsible for the October 23, 2019 accident?
 - b. What damages, if any, is Mr. Chan entitled to?

BACKGROUND, EVIDENCE AND ANALYSIS

15. In a civil claim such as this, the applicant Mr. Chan must prove 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.

Who is responsible for the accident?

16. The details of the accident are not particularly disputed. The accident happened at the intersection of Mountain Highway/Brooksbank Avenue and East Keith Road in

North Vancouver. Mr. Chan was traveling southbound on Mountain Highway intending to turn left onto East Keith Road. At the same time, Ms. Winters was heading northbound on Brooksbank Avenue (which turns into Mountain Highway at East Keith Road), intending to continue straight through the intersection onto Mountain Highway.

17. The parties disagree on the traffic light's colour at the time of the accident. Mr. Chan claims he faced a green light for left turning traffic on southbound Mountain Highway, while Ms. Winters says northbound Brooksbank Avenue traffic had a green light. Left turning traffic on both southbound Mountain Highway and northbound Brooksbank Avenue have a dedicated left turn signal.
18. In his initial report to ICBC, Mr. Chan said he had an advance green light for left turning traffic. In a subsequent report, Mr. Chan just advised his "light was green". Mr. Chan did not say what colour the traffic light he faced was in his Dispute Notice or his submissions. In both her reports to ICBC and in a statement provided to an independent adjuster, Ms. Winters advised she was the first car stopped at a red light northbound on Brooksbank Avenue. When the light turned green, Ms. Winters says she started to proceed through the intersection when Mr. Chan suddenly entered the intersection and turned left in front of her.
19. In addition to the parties, there were 3 other witnesses to the accident who provided statements to ICBC. Two of them also provided statements to an independent adjuster. Mr. Chan questions the "genuine identity and credibility" of the witnesses. He says because they did not swear under oath, there is no reassurance the witnesses are telling the truth. I note the CRT's rules do not require witness statements to be given under oath. I address the witnesses' evidence below.
20. Mr. Chan also alleges the witnesses essentially conspired with Ms. Winters to promote "a hoax, a fraud, a scam" against him. He questions whether the witnesses were present at the accident scene at all. I find there is no evidence at all to support Mr. Chan's assertions, and I give them no weight.

21. I turn then to the witnesses' evidence.
22. The first witness, CA, was in a vehicle stopped directly behind Ms. Winters on Brooksbank Avenue. In a telephone conversation with an ICBC employee on November 4, 2019, CA advised she and Ms. Winters were both stopped at the red light at East Keith Road. Once their light turned green, both vehicles started moving forward through the intersection. CA says Mr. Chan did not stop at the light and proceeded to turn left in front of their vehicles, when the collision between Ms. Winters and Mr. Chan occurred.
23. The second witness, KR, was the first vehicle in the left turn lane facing northbound on Brooksbank Avenue, directly to the left of Ms. Winters. KR provided a telephone statement to ICBC on November 4, 2019 and a statement to an independent adjuster on January 8, 2022. KR says both KR and Ms. Winters were stopped for the red light at East Keith Road when the light for through traffic changed to green, but remained red for left turning traffic. When Ms. Winters' light turned green, northbound traffic, including Ms. Winters, started moving through the intersection when KR says Mr. Chan entered the intersection without stopping and turned left into the intersection in front of Ms. Winters.
24. The third witness, JK, provided a telephone statement to ICBC on November 5, 2019 and a further statement to an independent adjuster on January 4, 2022. In both statements, JK advised they were stopped northbound on Brooksbank Avenue waiting for the red light to change. JK was a few cars back from Ms. Winters. JK said once their light turned green, traffic started moving through the intersection when a vehicle turned left in front of them. JK did not see the actual impact. JK said Mr. Chan must have had a red light because straight through traffic faced a green light.
25. Mr. Chan says the witnesses should not be trusted because they are all incorrect about the intersection's layout. He says each of the witnesses, as well as Ms. Winters, incorrectly say northbound traffic had 4 lanes when there were really 3. He says their evidence is therefore suspicious. I disagree. First, neither CA, KR, nor JK commented on how many lanes northbound Brooksbank Avenue had. Second, in Ms. Winters'

statement to an independent adjuster, when describing Brooksbank Avenue northbound, she stated “I think there are four lanes, a right turning lane, two straight lanes, and one left turning lane”. In fact, Brooksbank Avenue is 3 lanes at that point, a left turn lane, a straight through lane, and a combination straight through and right turn lane. Although Mr. Chan says Ms. Winters was in the right-most lane, Ms. Winters and KR both say Ms. Winters was in the straight through lane immediately beside the left turn lane.

26. In short, Ms. Winters was incorrect about exactly how many lanes in her direction of travel when speaking to the independent adjuster. Similarly, I find Mr. Chan was incorrect about Ms. Winters’ lane of travel. I find nothing turns on the minor discrepancies of either party. Despite Mr. Chan’s various assertions already discussed, I accept the witnesses’ statements, I find them credible, and I rely on them.
27. Both Mr. Chan and ICBC submitted a 38-page “Timing Sheet” from the City of North Vancouver for the traffic lights at the intersection. No party provided any explanation about how to read or interpret the document. So, I place no weight on it.
28. In any event, weighing the evidence before me, I find the light was green for northbound Brooksbank Avenue traffic. I find the dedicated left turn signal for southbound traffic on Mountain Highway was red when Mr. Chan entered the intersection to complete his left turn.
29. I turn to the relevant sections of the *Motor Vehicle Act* (MVA):
 - a. Section 127 says a motorist approaching a green light may proceed through the intersection.
 - b. Section 129 says a motorist approaching a red light must stop.
 - c. Section 174 says 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. I find Ms. Winters had the right of way as she faced a green light, consistent with section 127 of the MVA. I find Mr. Chan breached section 129 of the MVA for failing to stop at the red light before he entered the intersection. In particular, I rely on CA and KR's witness statements that both say Mr. Chan did not stop at the light before starting his left turn. I also find Mr. Chan breached section 174 of the MVA by attempting to turn left when Ms. Winters' vehicle was in the intersection and was an immediate hazard.
31. Although a driver with the right of way is generally entitled to assume that others will follow the rules of the road, the driver with the right of way must still act reasonably to avoid hazards. Here, I find there is nothing from the parties or from the witnesses that suggest Ms. Winters had any opportunity to avoid the collision once Mr. Chan entered the intersection and started his turn. I find Ms. Winters was not negligent.
32. As a result, I find Mr. Chan solely responsible for the October 23, 2019 accident. It follows that Mr. Chan is not entitled to any damages.
33. I dismiss Mr. Chan's claims.

FEES, EXPENSES AND INTEREST

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 Mr. Chan was unsuccessful, I dismiss his claim for tribunal fees. As both Ms. Winters and ICBC were successful, I order Mr. Chan to reimburse them \$25 each for tribunal fees. No dispute-related expenses were claimed.

ORDERS

35. Within 14 days of the date of this decision, I order the applicant, Shek Chan, to pay the respondents, Julia Madolyn-Henry Winters and Insurance Corporation of British Columbia, \$25 each for reimbursement of tribunal fees.

36. The respondents are also entitled to post-judgment interest under the *Court Order Interest Act*.
37. Mr. Chan's claims are dismissed.
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.

Andrea Ritchie, Vice Chair