Civil Resolution Tribunal

Date Issued: October 21, 2022

File: VI-2021-007856

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Coleman v. Longy*, 2022 BCCRT 1157

B E T W E E N :

KATHERINE CLAIRE COLEMAN

APPLICANT

A N D :

JANINE BEATRICE LONGY

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kristin Gardner

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on October 25, 2019 in Victoria, British Columbia.

2. The applicant, Katherine Claire Coleman, was driving east on Sayward Hill Crescent, intending to turn left at the intersection of Cordova Bay Road. The respondent, Janine

Beatrice Longy, was driving south on Cordova Bay Road, straight through the intersection. The parties collided in the intersection while the applicant was making her turn. They disagree about who was at fault for the accident, as each party says that they entered the intersection on a green light.

3. The applicant was undisputedly injured as a result of the accident. The parties agree that the applicant is entitled to $5,500 for non-pecuniary (pain and suffering) damages and $1,755 for accelerated depreciation of the applicant's vehicle, subject to my liability determination.

4. The applicant is represented by a lawyer, Nigel Elliott. The respondent is represented by an employee of her insurer, Insurance Corporation of British Columbia (ICBC).

JURISDICTION AND PROCEDURE

5. 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.

6. 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 The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect.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.

7. 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, as the

applicant already consented to continuing her dispute at the CRT, nothing turns on the BCCA's decision.

8. 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.

9. 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. 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. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.

10. 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.

11. During the CRT's tribunal decision process, on the respondent's behalf ICBC advised CRT staff that it intended to claim a deduction from the applicant's damages award under the *Insurance (Vehicle) Act* (IVA). The IVA prohibits a party from telling the tribunal member details about any deduction until after the tribunal member has assessed damages. CRT staff informed me that the respondent intended to claim a deduction, but not the type of deduction or the amount.

12. After reviewing the evidence and submissions about liability, I advised the parties through CRT staff of my liability and damages assessment and asked for evidence

and submissions about the claimed deductions and the basis for those deductions, which the respondent provided. The applicant chose not to provide any evidence or submissions in response. My decision about deductions is discussed below.

ISSUE

13. The issue in this dispute is who is liable for the October 25, 2019 accident and to what extent the applicant is entitled to the agreed-upon damages.

BACKGROUND, EVIDENCE, AND ANALYSIS

14. In a civil claim such as this, Ms. Coleman as the applicant must prove her 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.

15. The following facts are undisputed. The accident occurred at about 11:00 am on October 25, 2019, in the intersection of Sayward Hill Crescent and Cordova Bay Road. The intersection is controlled in all directions with a traffic light. Sayward Hill Crescent has one straight through lane and one dedicated right turn lane in each direction. Cordova Bay Road has one straight through lane and one dedicated left turn lane in each direction.

16. The applicant was travelling east in the straight through lane on Sayward Hill Crescent. She says she came to a stop for a red light and intended to turn left to proceed south on Cordova Bay Road. The applicant says that when her light turned green, she looked left and right before making her left turn. She says that as she was turning, the passenger side of her vehicle was struck by the respondent.

17. It is undisputed that the respondent was travelling in the southbound straight through lane of Cordova Bay Road. The applicant says the respondent entered the intersection on a red light.

18. In contrast, the respondent says she had a green light as she approached the intersection. She says she was following traffic ahead of her and that her light

remained green as she entered the intersection. The respondent says she did not see the applicant's vehicle until the impact.

19. The photos of the parties' vehicles show damage along the entire length of the applicant's passenger side door, and to the driver's side front quarter panel on the respondent's vehicle. I find the vehicle damage appears consistent with a side-swipe type impact, as there is no apparent damage to the front of the respondent's vehicle. The applicant argues that the vehicle damage shows the respondent hit her, not that the applicant hit the respondent. However, even if the respondent collided with the applicant, I find that is not determinative of fault or of which party had a green light.

20. It is undisputed that there were no independent witnesses to the collision, and no video evidence such as surveillance or dash cam footage. In other words, there is no objective evidence about who had a green light, and so I must assess the credibility and reliability of the parties' evidence. Credibility is about whether the party is telling the truth. Reliability is about whether the party's recollection is accurate regardless of their intentions.

21. I find the evidence shows both parties were consistent in their statements about the accident circumstances, and that they were each certain they entered the intersection on a green light. I find there is no evidence that either party has expressed any doubt about their position on that point. Overall, I find it unlikely that either party has been dishonest about their belief that their light was green. I find they are each sincerely convinced that they had the right of way. In other words, I find that one party is honestly mistaken about having a green light, and so I turn to the reliability of the parties' accounts.

22. The applicant argues that her version is a more reasonable and reliable explanation of how the accident happened. I infer that she means it is unlikely that someone would stop for a red light and then proceed into the intersection while the light was still red. However, in *Heffernan v. Charlish*, 2019 BCSC 825, which involved circumstances very similar to this case, the court found that a driver had stopped and then "perhaps not intentionally" proceeded into the intersection while the light was still red. Here, I

find it is possible that the applicant experienced a momentary mental lapse and mistakenly thought her light had turned green. So, I do not find the applicant's version more likely or more reliable simply because she came to a stop before she entered the intersection.

23. The applicant also argues that the respondent's statements are unreliable because they show the respondent was not paying attention to her surroundings. The applicant specifically points to the respondent's admission that she did not see the applicant before the collision.

24. Section 144 of the *Motor Vehicle Act* (MVA) says that a person must not drive a motor vehicle on a highway without due care and attention. This reflects the common law duty for drivers to drive with reasonable care.

25. I agree with the applicant's submission that the respondent should have seen the applicant's vehicle before the impact. The applicant had entered the intersection and crossed the 2 northbound lanes on Cordova Bay Road as she made her left turn. I find the applicant was turning directly into the respondent's path of travel and was there to be seen before the impact. I find the respondent's failure to see the applicant shows a lack of attention to her surroundings, in breach of section 144 of the MVA.

26. However, I find the same argument can be made for the applicant. In none of the applicant's evidence does she say that she saw the respondent or applied the brakes before the collision. She says she looked briefly to the right and left before starting her turn. There is no suggestion that there were any vehicles in the southbound left turn lane that might have obstructed the applicant's ability to see the respondent approaching the intersection. I also find the respondent was likely very close to entering the intersection when the applicant started her turn from a stopped position, and so the respondent was also there to be seen. I find the applicant's failure to see the respondent and ensure that the respondent came to a stop before the applicant entered the intersection was a breach of section 144 of the MVA.

27. So, I find that both the applicant and the respondent failed to drive with due care and attention, and that their driving fell below the standard of a reasonably careful and prudent driver. I find that they both bear some responsibility for the accident. However, to determine each party's degree of fault, I find it is necessary to determine who had the right of way. As noted in *Hou v. McMath*, 2012 BCSC 257, even when all parties appear credible and it is difficult to choose between 2 possible scenarios, I must consider from an objective basis which scenario is more probable.

28. On the evidence before me, I find it is more likely than not that the respondent inadvertently ran a red light. I say this because the respondent stated that she had a passenger in her vehicle and that they were chatting when the accident occurred. The passenger was a minor, and given their age, I find it would not be appropriate to draw an adverse inference against the respondent for her failure to provide a statement from the passenger. However, as the respondent was undisputedly talking to someone in her vehicle, I find there is a greater likelihood that she was distracted and did not observe the colour of her light as she entered the intersection.

29. Further, ICBC's file notes show the applicant reported having a "vivid memory" of her light turning green before she entered the intersection and that she looked up immediately after the impact and confirmed her light was green. While the respondent stated that her light "remained green the whole time", I find the applicant's more specific recollections about observing a green light are more persuasive. For these reasons, I find the evidence is tipped slightly in favour of the applicant's version, and I accept that the applicant likely entered the intersection on a green light.

30. In summary, while I have found the applicant likely had the right of way, I have also found that she bears some responsibility for the accident for her failure to notice the respondent approaching as they both entered the intersection. I find that had the applicant been driving with the required care and attention, she would have seen the respondent and been able to avoid the collision. However, I find the respondent's negligence in failing to stop for a red light is more blameworthy than the applicant's negligence.

31. In the *Heffernan* decision referenced above, the court apportioned 75% responsibility to the driver that entered the intersection on a red light. I find that same apportionment reasonable here. I apportion 75% liability to the respondent, and 25% to the applicant.

Damages

32. As noted, the parties came to an agreement that the applicant is entitled to $5,500 for non-pecuniary damages and $1,755 for accelerated depreciation of the applicant's vehicle, subject to my liability determination.

33. Given that I have found the applicant 25% liable for the accident, I find her damages must be reduced by 25%. Therefore, I find the applicant is entitled to $4,125 in non-pecuniary damages, and $1,316.25 for accelerated depreciation.

Deductions

34. On March 2, 2021, on the respondent's behalf ICBC paid the applicant $2,750 towards her damages claim. The respondent asks that this amount be deducted from the applicant's award for non-pecuniary damages, as it says the payment was a "pre-litigation payment" made under Part 9 of the IVA.

35. Section 108 of the IVA allows ICBC to offer pre-litigation payments, which must be made in writing and contain a statement that the offer is made under Part 9 of the IVA. The offer must also be made before the recipient files an action (or CRT dispute) about the accident.

36. The respondent's evidence shows that ICBC's offer to pay the applicant $2,750 was made in a February 23, 2021 email. The email stated the offer was made under Part 9 of the IVA and that the payment would be deducted from any higher award made through a lawsuit or CRT dispute. The evidence shows that the applicant expressly accepted the offer on the terms set out in ICBC's February 23, 2021 email. I also find the offer was made well before the applicant filed this CRT dispute in October 2021.

37. For the above reasons, I find the $2,750 was paid to the applicant as a pre-litigation payment under Part 9 of the IVA, and so it must be deducted from the applicant's

damages award under section 112 of the IVA. Therefore, I find the applicant is entitled to $1,375 in non-pecuniary damages ($4,125 - $2,750).

SUMMARY

38. In summary, the applicant is awarded the following:

Non-pecuniary damages	$1,375
Accelerated depreciation	$1,316.25
Total	$2,691.25

39. Pre-judgment interest and reimbursement for CRT fees and dispute-related expenses are also payable to the applicant, as discussed below.

FEES, EXPENSES AND INTEREST

40. The *Court Order Interest Act* (COIA) applies to the CRT. Section 2 of the COIA says that pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury. So, I award no interest on the non-pecuniary damages.

41. The applicant claims pre-judgment interest on the accelerated depreciation claim, and relies on *Schnipper v. Nadeau*, 2022 BCCRT 173. In *Schnipper*, the tribunal member noted that courts and the CRT have inconsistently awarded pre-judgment interest on accelerated depreciation damages as of the accident date and from the date the owner sold the vehicle. However, as the courts have found it is unnecessary for a vehicle owner to sell the vehicle to make an accelerated depreciation claim, the tribunal member found that pre-judgment interest on accelerated depreciation damages starts to accrue on the date of the loss, which is the accident date. Previous CRT decisions are not binding on me. However, I agree with the tribunal member's reasoning in *Schnipper* and apply it here.

42. I find the applicant is entitled to pre-judgment interest on the $1,316.25 accelerated depreciation award from the accident date to the date of this decision. This equals $36.35.

43. 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. The applicant was partially successful, so I find she is entitled to be reimbursed for half of her CRT fees, which is $87.50.

44. The applicant also claims $618.30 for dispute-related expenses, including an accelerated depreciation report, long distance calls, printing costs, court service fees, and registered mailing costs. The only invoice in evidence shows the applicant paid $551.25 for the accelerated depreciation report. While the parties came to an agreement about the applicant's entitlement to damages for acceleration depreciation before the tribunal decision process, I find the report was likely of assistance to the parties in reaching their agreement, and I find the amount reasonable. The applicant did not provide any evidence or submissions about the other alleged expenses. So, I find the applicant is entitled to reimbursement of the proven $551.25 in dispute-related expenses.

ORDERS

45. Within 30 days of the date of this decision, I order the respondent, Janine Beatrice Longy, to pay the applicant, Katherine Claire Coleman, a total of $3,366.35, broken down as follows:

    a. $2,691.25 in damages,

    b. $36.35 in pre-judgment interest under the COIA,

    c. $87.50 in CRT fees; and

    d. $551.25 in dispute-related expenses.

46. The applicant is also entitled to post-judgment interest under the COIA.

47. 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