Civil Resolution Tribunal

Date Issued: December 7, 2022

File: VI-2021-004384

Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Ali v. Chan*, 2022 BCCRT 1315

BETWEEN:

FARTUN ALI

APPLICANT

AND:

SHIRLEY CHAN

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on November 19, 2020 in Surrey, British Columbia.

2. The applicant, Fartun Ali, says the respondent, Shirley Chan, is responsible for the accident, and seeks $4,000 to repair her vehicle, $604.85 for rental car costs, and $2,720 in past income loss.

3. The respondent denies responsibility for the accident, and says the applicant is not entitled to any damages.

4. The applicant represents herself. The respondent is represented by their 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 The British Columbia Supreme Court (BCSC) had ordered that those sections were unconstitutional and no longer in effect.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, given 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 that 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 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 in *Yas v. Pope*, 2018 BCSC 282, where the court recognized that oral hearings are not necessarily required where credibility is an 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.

Deductions

11. During the CRT's tribunal decision process, ICBC, on the respondent's behalf, 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. Given my conclusions below, I find it unnecessary to make any findings about potential deductions, so I did not ask the parties for submissions on deductions before making this final decision.

ISSUES

12. The issues in this dispute are who is responsible for the November 19, 2020 accident and to what extent, if any, the applicant is entitled to the claimed damages.

BACKGROUND, EVIDENCE AND ANALYSIS

13. In a civil claim such as this, the applicant must prove her 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. I note the applicant chose not to submit any evidence, despite being given the opportunity to do so.

Who is responsible for the November 19, 2020 accident?

14. The accident's details are not significantly in dispute. The applicant says she was westbound on 105 Avenue, intending to turn left onto 132 Street, to continue southbound. At the same time, the respondent was traveling northbound on 132 Street, intending to continue straight through the intersection. The parties' vehicles collided while the applicant was attempting her left turn.

15. The intersection of 105 Avenue and 132 Street is a T-intersection. Vehicles traveling westbound on 105 Avenue must turn either left or right onto 132 Street, as 105 Avenue terminates. The applicant faced a stop sign on 105 Avenue, and the respondent undisputedly had a green light on 132 Street.

16. The applicant says the respondent stopped her vehicle and waved the applicant forward, so the applicant started her left turn. The applicant says the respondent then continued straight and the collision occurred. So, the applicant says the respondent should be held responsible for causing the accident.

17. In contrast, in the applicant's first accident description to ICBC she stated she assumed the respondent stopped due to a red light, so she started her left turn. Notably, the applicant did not make any mention of the respondent allegedly waving

the applicant to turn in front of the respondent when she reported the accident to ICBC.

18. In an undated signed statement the respondent said as they approached the intersection the applicant started her turn from 105 Avenue onto 132 Street, in front of the respondent's vehicle, and the two vehicles struck.

19. There was one witness to the accident, AS. AS was stopped southbound on 132 Street, intending to turn left onto 105 Avenue. AS stated the respondent yielded in the intersection, they assumed for the applicant to turn. When asked whether the respondent actually yielded for AS to make their left turn, AS stated they did not know.

20. ICBC hired an independent adjuster to obtain a statement from AS on March 1, 2022. In the transcript from that conversation AS repeated that the applicant was attempting to turn left, the respondent appeared to yield to her in the middle of the intersection, then both cars moved forward and the accident occurred. AS confirmed the respondent faced a green light and the applicant faced a stop sign. AS advised they may still have dash camera footage of the accident. Later, AS refused to cooperate with ICBC or the independent adjuster unless they were paid. So, no dash camera footage was provided, and the March 1, 2022 statement was never signed.

21. The respondent has not explained why they stopped, or otherwise addressed AS's statements other than to argue their statements are "suspect" given their desire for financial compensation. I place no weight on the applicant's speculation about the truth of AS's statements. I accept AS's statements, and I note they provided two statements before requesting compensation. On balance, I accept the respondent stopped in the intersection for no clear reason, given they had a green light. However, I do not accept the respondent waved the applicant in front of their vehicle. I find if they had done so, AS would have seen and commented on it, given their proximity to the vehicles before the accident.

22. I turn to the relevant provisions of the *Motor Vehicle Act* (MVA):

    a. Section 144(1) says a person must not drive without due care and attention and without reasonable consideration for other persons using the highway.

    b. Section 175 says a vehicle entering a through highway (here, the applicant entering 132 Street) must stop in compliance with section 186, and must yield the right of way to traffic that has entered the intersection or is so close that it constitutes an immediate hazard.

    c. Section 186(a) says if there is a stop sign at an intersection, a driver must stop at the marked stop line, if any.

    d. Section 189(1)(c) says, except when necessary to avoid conflict with traffic, a driver must not stop a vehicle in an intersection.

23. In breach of section 175, I find the applicant failed to properly yield the right of way to the respondent's vehicle, which was admittedly in the intersection when the applicant started her left turn. Although the applicant says the respondent yielded for the applicant to turn, I disagree. At best, I find it is unclear why the respondent stopped. Even the witness AS was not sure whether the respondent yielded to allow the applicant or AS to turn left.

24. In any event, I find it was negligent for the applicant to start her left turn when it was unclear to her what the respondent's intentions were. I find the applicant's negligence caused the November 19, 2020 accident.

25. However, the matter does not end there. I also find the respondent has failed to adequately explain why they stopped in the middle of the intersection when facing a green light. There is no indication the respondent stopped for traffic, and AS stated they, the applicant, and the respondent were the only vehicles around. So, I find the respondent violated section 189(1)(c) of the MVA by stopping in the middle of the intersection for no apparent reason. This breach also puts the respondent in violation of section 144 of the MVA (see: *Yacub v. Chipman*, 2010 BCSC 1215).

26. That being said, I find the applicant is more blameworthy than the respondent. The applicant left a place a safety when it was unclear what the respondent was doing. I find the applicant is 75% responsible for the accident, and the respondent is 25%.

Damages

27. As noted above, the applicant claims $4,000 for vehicle repairs, $604.85 for car rental costs, and $2,720 for past income loss.

28. The problem for the applicant is that she provided no evidence or substantive submissions for these claims. Parties are told during the CRT process to submit all relevant evidence.

29. For example, she provided no photographs of her damaged vehicle or any estimate or invoice for repairs. Similarly, she provided no invoice for the alleged car rental costs. For her income loss, she provided no employment information, such as what she did for work, how much work she missed, or how much she earned.

30. As a result, I find the applicant has not proven any entitlement to her claimed damages. I dismiss her claims.

FEES, EXPENSES AND INTEREST

31. 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. The respondent was successful, so I find the applicant must reimburse them $25 in paid tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

32. Within 30 days of the date of this decision, I order the applicant to pay the respondent a total of $25 as reimbursement of tribunal fees.

33. The respondent is also entitled to post-judgment interest under the *Court Order Interest Act*.

34. The applicant's claims are dismissed.

35. 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