



Civil Resolution Tribunal

Date Issued: December 21, 2022

File: VI-2021-005124
and VI-2021-005592

Type: Motor Vehicle Injury

Category: Minor Injury Determination
and Fault & Damages

Civil Resolution Tribunal

Indexed as: *Harman v. ICBC*, 2022 BCCRT 1359

BETWEEN:

DEBORA HARMAN

APPLICANT

AND:

VALENTINE GEORGE OWENS 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 November 16, 2019 in Surrey, British Columbia.
2. The applicant, Debora Harman, was attempting to turn left into her residential driveway when the respondent, Valentine George Owens¹, attempted to pass her vehicle on the left and the two vehicles collided. Ms. Harman was undisputedly injured as a result of the accident.
3. The respondent, Insurance Corporation of British Columbia (ICBC), insures both parties.
4. Ms. Harman filed two related motor vehicle disputes with the Civil Resolution Tribunal (CRT) against both Valentine George Owens and ICBC: (1) a request that the CRT determine whether her injuries are “minor injuries” under the *Insurance (Vehicle) Act* (dispute VI-2021-005124), and (2) a claim for a liability determination and personal injury damages resulting from the accident (dispute VI-2021-005592).
5. The parties agree Ms. Harman’s injuries are not “minor injuries”. Further, the parties agree, subject to my liability assessment, that Ms. Harman’s non-pecuniary (pain and suffering) damages total \$50,000, the maximum the CRT may award in an accident claims dispute for liability and damages. So, the only issue before me in this decision is who is responsible for the November 16, 2019 accident.
6. Ms. Harman is self-represented. An authorized ICBC employee represents both respondents.

JURISDICTION AND PROCEDURE

7. These are the CRT’s formal written reasons. 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

¹ Valentine George Owens requested to be addressed only by their full name throughout this decision.

exclusive jurisdiction over the determination of whether an injury is a “minor injury” under the *Insurance (Vehicle) Act*. 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.

8. At the time Ms. Harman 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.
9. 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.
10. 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.
11. 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, the parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances, 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, in which the BCSC 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 these disputes through written submissions.

12. 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

13. Ms. Harman named ICBC as a respondent in both disputes. In addition to disagreeing with ICBC's internal liability assessment holding her 50% responsible for the accident, Ms. Harman says ICBC "continuously set her recovery back" by making the wrong fault decision, that it "made it difficult and depressing to get medical support", and that it improperly deleted evidence from its claim file (like the audio recording when Ms. Harman made her statement on the phone). Ms. Harman did not seek any specific remedy from ICBC, but rather seeks the \$50,000 against both Valentine George Owens and ICBC as "co-respondents".
14. Under sections 133(1)(b) and (c) of the CRTA, the CRT has jurisdiction to determine whether an injury is a "minor injury" pursuant to the relevant legislation, and to decide liability and damages in accident claims, up to \$50,000. Claims under these sections are claims based in negligence, properly brought against the other parties involved in the accident (here, Valentine George Owens). To the extent Ms. Harman is alleging ICBC breached its statutory obligations or its contract of insurance, the CRT does not have jurisdiction under its accident claims jurisdiction to hear 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 Ms. Harman's only remedy sought is for personal injury damages, I find these are properly sought against the other driver, not ICBC. As Ms. Harman does not claim a specific remedy against ICBC for the alleged breaches of its statutory obligation or its contract of insurance, I dismiss Ms. Harman's claims against ICBC.

Late evidence

15. Ms. Harman provided late evidence after the parties provided their initial submissions. The late evidence consisted of some emails between Ms. Harman and ICBC, various pictures of Ms. Harman's damaged vehicle, and some medical information. The respondents were provided with an opportunity to review and provide submissions on this late evidence, though they decided not to. I find there is no prejudice in allowing this late evidence, so I allow it, which is consistent with the CRT's flexible mandate. In any event, I note my decision does not turn on the late evidence.

ISSUE

16. The issue in this decision is who is responsible for the November 16, 2019 accident, and to what extent Ms. Harman is entitled to the agreed-upon damages.

BACKGROUND, EVIDENCE AND ANALYSIS

17. In a civil claim such as this, Ms. Harman as the applicant must prove her claims on a balance of probabilities, meaning more likely than not. While I have read all of the parties' voluminous evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.

The Accident

18. The accident details are mostly undisputed. On November 16, 2019, Ms. Harman and Valentine George Owens were both driving eastbound on 8th Avenue, between 188th and 200th Streets in Surrey, British Columbia. 8th Avenue is one lane in both directions at this location.
19. There was a slow-moving work truck also driving eastbound on 8th Avenue in front of Ms. Harman. Valentine George Owens was directly behind Ms. Harman. Ms. Harman turned on her left signal to turn left into her residential driveway. Around the same time, Valentine George Owens pulled into the westbound, oncoming traffic lane

intending to pass the slow-moving vehicle ahead of Ms. Harman. Ms. Harman's and Valentine George Owens' vehicles collided.

20. Ms. Harman says she had her left signal activated for some time before starting her left turn and says she looked in her mirrors and shoulder checked for traffic in the left lane. She says Valentine George Owens mistakenly thought her left signal was on to pass the work truck ahead of her. She says Valentine George Owens should be held solely responsible for the accident for trying to pass a vehicle when it was unsafe to do so.
21. Valentine George Owens says Ms. Harman is 50% responsible for the accident. They agree Ms. Harman had her left signal activated and say in their submissions that they assumed Ms. Harman was going to pass the slow-moving vehicle, which Valentine George Owens also intended to do. They say Ms. Harman then turned left towards the driveway and Valentine George Owens was unable to stop their truck before colliding with Ms. Harman's turning vehicle. In a later statement to an independent adjuster, Valentine George Owens stated they were in the oncoming lane attempting to pass Ms. Harman and the slow-moving vehicle when they saw Ms. Harman's turn signal come on, so they slowed to allow Ms. Harman to also pass the slow-moving vehicle, in front of Valentine George Owens. They say Ms. Harman then unexpectedly turned left and they were unable to stop and avoid the collision.
22. Ms. Harman provided two notarized statements from two witnesses. Neither witness actually saw the accident. The witnesses both state Valentine George Owens spoke to them at the accident scene and that Valentine George Owens told them they assumed Ms. Harman was going to pass the slow-moving vehicle, as were they. The statements about what Valentine George Owens allegedly said to the witnesses is hearsay. The CRT has discretion to accept hearsay evidence. In this case, I find the statements are consistent with Valentine George Owens' own evidence, so I accept them.
23. A third witness, MC, actually saw the accident. MC provided two brief phone statements to ICBC, one on December 16, 2019 and one on March 5, 2020. In those

statements MC explained they were driving the vehicle directly behind Valentine George Owens. MC said Valentine George Owens went to pass vehicles in the oncoming lane while Ms. Harman was turning left. They estimated the two vehicles started their respective maneuvers at approximately the same time.

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

- a. Section 159 says a driver must not drive to the left side of the roadway in overtaking and passing another vehicle unless the driver can do so safely.
- b. Section 166 says a driver must not turn left at a place other than an intersection unless it can be done safely with regard to the nature, condition and use of the highway and the traffic that is there or could be expected.

25. Here, I find the weight of the evidence is that Ms. Harman and Valentine George Owens both attempted their respective moves at the same time. That means, I find Ms. Harman started her left turn at approximately the same time Valentine George Owens started moving into the oncoming lane to overtake the vehicle ahead of Ms. Harman. Valentine George Owens undisputedly saw Ms. Harman's left turn signal and mistakenly believed she was going to pass the slow-moving vehicle in front of her.

26. Similar to the case of *Shallow v. Dyksterhuis*, 2013 BCSC 1761, I find Valentine George Owens decided to pass Ms. Harman without knowing what Ms. Harman's intention was. Valentine George Owens admits seeing Ms. Harman's signal, and even says they slowed down to allow Ms. Harman to enter the lane ahead of them. Although Valentine George Owens thought Ms. Harman would be passing the slow-moving vehicle in front of her, this assumption was clearly mistaken. I find Valentine George Owens should not have attempted to pass Ms. Harman, or the other slow-moving vehicle, in the circumstances.

27. Valentine George Owens argues Ms. Harman should be held 50% responsible for the accident and relies on the case of *Eccleston v. Dresen*, 2009 BCSC 332. However, in that case the plaintiff was held 60% responsible because the court found

she was negligent for failing to signal in a timely way and failing to keep a proper look out, neither of which are factors here. I do not find Ms. Harman was contributorily negligent.

28. As in *Shallow*, I find Valentine George Owens as the passing vehicle 100% responsible for the accident.

29. I turn then to Ms. Harman's claimed damages.

Damages

30. As noted, the parties agree Ms. Harman's damages are \$50,000, subject to my liability assessment. As I have found Valentine George Owens solely responsible for the November 16, 2019 accident, it follows that Ms. Harman is entitled to the full \$50,000 that the parties have agreed upon.

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. As Ms. Harman was successful, I find she is entitled to reimbursement of her paid tribunal fees (\$175). Ms. Harman did not claim any dispute-related expenses. I note the CRT's monetary limit is exclusive of CRT fees.

32. Further to section 2 of the *Court Order Interest Act*, pre-judgment interest must not be awarded on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses). So, Ms. Harman is not entitled to pre-judgment interest on the \$50,000 damages award or on the reimbursement of her paid tribunal fees. Post-judgment interest is payable as of the date of this decision.

ORDERS

33. Within 30 days of the date of this decision, I order the respondent, Valentine George Owens, to pay the applicant, Debora Harman, a total of \$50,175, broken down as follows:
- a. \$50,000 in damages, and
 - b. \$175 in tribunal fees.
34. Ms. Harman is also entitled to post-judgment interest under the *Court Order Interest Act*.
35. Ms. Harman's claims against ICBC are dismissed.
36. 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