



# Civil Resolution Tribunal

Date Issued: January 18, 2023

File: VI-2022-000436

Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Tsang v. Aujla*, 2023 BCCRT 46

BETWEEN:

WAN HANG TSANG

**APPLICANT**

AND:

SIMRANJIT SINGH AUJLA

**RESPONDENT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT BY THIRD PARTY NOTICE**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on September 8, 2019 in Vancouver, British Columbia, between the applicant, Wan Hang Tsang, and the respondent, Simranjit Singh Aujla.
2. The collision happened as Mr. Tsang was attempting to turn left from Scarboro Avenue onto southbound Victoria Drive, while Mr. Aujla was driving northbound on Victoria Drive. Their vehicles collided and Mr. Tsang says he was injured as a result. Mr. Tsang says the accident was Mr. Aujla's fault because he was excessively speeding. He seeks \$2,000 in non-pecuniary (pain and suffering) damages.
3. Mr. Aujla's insurer, Insurance Corporation of British Columbia (ICBC), says Mr. Aujla was in breach of his insurance policy under section 55 of the *Insurance (Vehicle) Regulation* (IVR). ICBC was added as a third party under section 77(3) of the *Insurance (Vehicle) Act* (IVA) so that it could dispute liability. The issue of whether Mr. Aujla breached his insurance policy is not before me.
4. Mr. Aujla says Mr. Tsang caused the accident by unsafely turning left. ICBC internally determined Mr. Tsang was 100% responsible for the accident. In this dispute, ICBC maintains the accident was solely Mr. Tsang's fault.
5. Mr. Tsang and Mr. Aujla are each self-represented. ICBC is represented by an authorized employee.

## 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 Mr. Tsang 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, and on December 22, 2022, the Supreme Court of Canada (SCC) declined to hear an appeal of the BCCA'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).
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. In some respects, the parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find I am properly able to assess and weigh the documentary evidence and submissions before me. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the BCSC recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue. Further, 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.
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.

12. During the CRT's tribunal decision process, ICBC advised CRT staff that it reserved the right to claim deductions under the IVA from any award for damages. 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 ICBC reserved the right to claim deductions, 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 the issue before making this final decision.

## **ISSUES**

13. The issues in this dispute are who is responsible for the September 8, 2019 accident and to what extent, if any, Mr. Tsang is entitled to the claimed \$2,000 in damages.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

14. In a civil claim such as this, the applicant Mr. Tsang 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. I note Mr. Aujla chose not to submit any evidence, despite being given the opportunity to do so.
15. The following facts are undisputed:
  - a. Scarboro Avenue is a 2-way residential street without centre line markings that terminates at Victoria Drive. Westbound Scarboro Avenue traffic must turn either left or right onto Victoria Drive, and faces a stop sign before doing so.
  - b. Victoria Drive at Scarboro Avenue is a 2-lane road with street parking on each curb. There are no traffic control devices for Victoria Drive traffic at Scarboro Avenue. Victoria Drive northbound is uphill to Scarboro Avenue.

- c. Mr. Tsang was traveling westbound on Scarboro Avenue, intending to turn left at the stop sign and travel southbound on Victoria Drive.
  - d. At the same time, Mr. Aujla was traveling northbound on Victoria Drive intending to continue traveling straight.
16. After the accident, police attended the scene and charged Mr. Aujla with a criminal driving offence. Mr. Aujla ultimately plead guilty to dangerous operation of a motor vehicle. I note Mr. Aujla's criminal plea does not necessarily determine liability in this civil case. Mr. Tsang still has the burden of proving that Mr. Aujla was negligent, and that that negligence caused the accident.
17. Mr. Tsang says Mr. Aujla was excessively speeding and due to that, Mr. Tsang was unable to see Mr. Aujla's vehicle before Mr. Tsang started his left turn. Mr. Tsang further says there was a parked vehicle about 100 feet on Mr. Tsang's left that obstructed Mr. Tsang's view of northbound traffic coming up the hill on Victoria Drive.
18. In support of his assertion that Mr. Aujla was excessively speeding, Mr. Tsang relies on a statement from the police records that indicates a police officer performed a "speed estimate" using a transit bus's video. The police officer's estimation was that Mr. Aujla was traveling between 96 and 102 km/h during the video. Additionally, ICBC submitted an Agreed Statement of Facts from Mr. Aujla's criminal trial which indicated Mr. Aujla's criminal defence lawyer agreed Mr. Aujla had accelerated to approximately 100 km/h in order to pass a transit bus, some time before the accident happened. The bus's video footage was not submitted as evidence in this dispute.
19. In contrast, Mr. Aujla and ICBC argue that Mr. Tsang left the stop sign when it was unsafe to do so. Specifically, Mr. Aujla denies driving at 102 km/h, but acknowledges he had to accelerate his vehicle to pass the bus and travel up the hill on Victoria Drive. Mr. Aujla says Mr. Tsang was in a better position to see traffic as he was on top of the hill, but argues Mr. Tsang decided to blindly turn left instead. Mr. Aujla and ICBC say Mr. Aujla's vehicle posed an immediate hazard and Mr. Tsang failed to yield the right of way.

20. Based on the totality of the evidence, I accept that Mr. Aujla was speeding, going close to 100 km/h, as he passed the transit bus. I am unable to determine from the evidence before me how far the transit bus was from the accident location. I find there is insufficient evidence that would allow me to determine how fast Mr. Aujla was going at the time of the accident, though I accept he was speeding to some degree, which he does not specifically deny.
21. The only other witness to the accident was AL, Mr. Aujla's passenger. In a signed statement to an independent adjuster, AL said as Mr. Aujla traveled north on Victoria Drive, Mr. Tsang's vehicle turned left suddenly in front of them, and Mr. Aujla was unable to avoid the collision.
22. I turn to the relevant provisions of the *Motor Vehicle Act* (MVA). Section 186(a) says that if there is a stop sign at an intersection, a driver must stop at the marked stop line, if any. Additionally, section 175 says that a vehicle entering a through highway (here, Victoria Drive) 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.
23. First, although Mr. Tsang submits he stopped at the stop line and then "slowly inched forward" to get a better view of Victoria Drive traffic, I find Mr. Tsang's dash cam footage shows otherwise. It shows Mr. Tsang stopped well past the stop sign and stop line before checking for Victoria Drive traffic. However, I find nothing turns on this because the dash cam shows Mr. Tsang did stop and yield to multiple vehicles going both north and south on Victoria Drive before starting his left turn. Within 2 seconds of Mr. Tsang slowly starting his left turn, tire screeching is heard, and the impact occurs. Neither the accident, nor Mr. Aujla's approaching vehicle, are caught within the dash cam's view.
24. Before a vehicle constitutes an "immediate hazard", it must be in a position and traveling at a speed where a reasonable driver would be able to see it and assess the risk it posed (*Gorman v. Meghji*, 2018 BCSC 1904 at paragraph 114). Further, the time to assess whether a vehicle is an immediate hazard is at the moment the

servient driver (here, Mr. Tsang) begins to enter the intersection (*Gorman*, at paragraph 115, citing *Carich v. Crook*, 1992 CanLII 995 (BCCA)). Given the dash cam shows the accident occurred almost immediately after Mr. Tsang started his left turn, I find Mr. Aujla's vehicle posed an immediate hazard.

25. As noted above, Mr. Tsang submits his view of oncoming northbound traffic was blocked by a parked vehicle to Mr. Tsang's left. In *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA), the court held that where a party's vision of the other is blocked by traffic, the dominant driver (here, Mr. Aujla) is generally entitled to continue, absent proof from the servient driver that the dominant driver had a reasonable opportunity to avoid the accident and should have done so.
26. In *D'Amici v. Fahy*, 2020 BCCA 89 (at paragraph 45), the court found that even if a dominant driver is excessively speeding, it does not lead to liability in negligence unless the speed prevented them from taking reasonable steps to avoid the collision. Here, there is no such evidence. So, while Mr. Aujla's speeding may be blameworthy, it is insufficient to prove a breach of the standard of care.
27. Mr. Tsang says he was unable to see Mr. Aujla's speeding vehicle before he started his turn. However, the burden was on Mr. Tsang not to leave a place of safety (behind the stop sign) until his turn could be made safely. I find it was negligent for Mr. Tsang to attempt his left turn when his view of northbound traffic was admittedly obscured. I find there is insufficient evidence before me to prove Mr. Aujla's speed, and not Mr. Tsang's failure to yield the right of way, caused the accident. Mr. Tsang bears the burden of proving his claim, and I find he has not done so.
28. Given all the above, I find Mr. Tsang's failure to yield to oncoming traffic that posed an immediate hazard was negligent and he is responsible for the September 8, 2019 accident.
29. It follows that Mr. Tsang's claim for damages is dismissed. However, I note that in his submissions Mr. Tsang withdrew his claim for a monetary amount as he (Mr. Tsang)

felt unable to prove the damages. Instead, Mr. Tsang said he only wanted to focus on who was at fault for the accident. I dismiss Mr. Tsang's claims in their entirety.

## **FEES, EXPENSES AND INTEREST**

30. 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. Tsang was not successful, I find that he is not entitled to reimbursement of his paid tribunal fees. For the same reason, I find Mr. Tsang must reimburse ICBC the \$25 it paid in tribunal fees. Mr. Aujla was also successful but did not pay tribunal fees. No dispute-related expenses were claimed.

## **ORDERS**

31. Within 30 days of the date of this decision, I order Mr. Tsang to pay ICBC a total of \$25 as reimbursement for tribunal fees.
32. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
33. Mr. Tsang's claims are dismissed.

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Andrea Ritchie, Vice Chair