



Civil Resolution Tribunal

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Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Ma v. Shergill*, 2023 BCCRT 62

B E T W E E N :

SIU SHEUNG SUSAN MA

APPLICANT

A N D :

JASKARAN SHERGILL

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on March 29, 2021, in Vancouver, BC. The applicant, Siu Sheung Susan Ma, and the respondent, Jaskaran Shergill, were both driving south on Victoria Drive. The applicant says that she was in the curb lane when the respondent cut into her lane from the middle lane, hitting

her sideview mirror. The respondent says that the applicant was behind them in the middle lane and struck them while she tried to accelerate past the respondent by changing into the curb lane.

2. The Insurance Corporation of British Columbia (ICBC) insures both parties. ICBC internally held the parties equally responsible for the accident. ICBC's liability determination is not binding on me.
3. The parties agree that the applicant's damages are \$1,000. The applicant says that the respondent was fully responsible for the accident, so she should receive the full amount. The respondent says that ICBC's liability determination should stand, although as discussed in more detail below, this makes the respondent's position on liability unclear.
4. The applicant is self-represented. The respondent is represented by an ICBC employee.

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. 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.
7. 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.

8. 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.

ISSUE

9. The issue in this dispute is who was responsible for the accident.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove her claims on a balance of probabilities, which means "more likely than not". While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
11. The accident occurred at around 3:00pm on March 29, 2021. The applicant was driving a dark blue sedan. The respondent, who was working for a construction company at the time, was driving a large flatbed truck. The parties were both driving south on Victoria Drive between East 43rd and East 47th Avenues. In this stretch of Victoria Drive, there are 2 southbound lanes. There is no evidence from any independent witness. There is no dashcam or other video footage of the accident.
12. The applicant gives the following account. She was in the curb lane and the respondent was beside her in the middle lane. She saw the respondent in her driver's side mirror as the respondent began to speed up to could change into her lane. She

slowed down and honked, but the respondent kept changing lanes, side swiping her and hitting her driver's sideview mirror.

13. The respondent gives the following account. The applicant was behind them in the middle lane. The respondent did not have to turn until 57th Street and preferred to drive their large truck in the middle lane. The applicant tried to accelerate past the respondent by changing into the curb lane, but she clipped the right rear corner of their flatbed with her sideview mirror.
14. It is undisputed that there was no damage to any part of the applicant's vehicle other than the sideview mirror. Most of the outer casing broke off in the accident.
15. The respondent's position on liability is confusing and contradictory. As noted above, ICBC had split liability equally between the parties. This was not because it determined that they were equally at fault, but because it determined that there was no objective evidence to support one driver's account over the other. In this dispute, the respondent argues that this 50/50 liability apportionment is appropriate "because neither version of the accident can be verified".
16. Contrary to the respondent's submission, section 1(2) of the *Negligence Act* does not say that liability must be divided equally when it is impossible to tell what happened. Rather, section 1(2) says that liability must be divided equally when both people were at fault, but it is impossible to tell whose conduct was worse. In other words, the respondent's argument that they should be held 50% liable necessarily means that, in their view, the respondent and the applicant were both at fault. This is entirely at odds with the respondent's account of the accident, which clearly only implicates the applicant.
17. The respondent's position in this dispute therefore raises the question of whether they have effectively admitted that they were negligent. It is difficult to see how it could be interpreted any other way. However, I find that I do not need to determine the effect of the respondent's apparent admission because I agree with the applicant that the

vehicle damage is more consistent with her account of the accident. My reasons follow.

18. The applicant makes 3 arguments about vehicle damage. I will only discuss one of them, because I find that it is sufficiently persuasive on its own. The applicant says that there was damage to her mirror's inside plastic rim, which surrounds the mirror itself. Photos of the mirror confirm this damage. Like all sideview mirrors, the mirror faces backwards. The applicant argues that damage to a backwards-facing part of her mirror could only have been caused by the respondent's truck accelerating from behind and not by her accelerating into the back of his truck. The respondent does not specifically respond to this argument.
19. Based on the mirror's orientation, I agree with the applicant that it would be impossible for there to be damage to this part of the mirror if she had accelerated into the back of the respondent's truck. If she had accelerated into the back of the respondent's truck, the point of impact would have been the other side of the mirror. I find that expert evidence is not necessary to prove this point because it is non-technical.
20. I note the respondent's argument that there is no evidence of any damage to the truck. The respondent says that this is more consistent with impact with his metal flatbed than the truck's cab. It is true that there is no evidence of any truck damage, but the respondent provided no closeup photos of the truck. I find that since the point of impact was small and brief, any damage would be minimal. It is therefore impossible to confirm from the evidence that there was no damage. I also find that it is unclear that the relatively minor impact would have necessarily caused any truck damage at all. The respondent led no expert evidence about this.
21. Based on the plastic rim damage, I find it more likely than not that the respondent hit the applicant's sideview mirror when the respondent changed from the middle lane to the curb lane, as the applicant alleges. As mentioned above, I find it unnecessary to discuss the applicant's arguments about a possible impact from the truck's tire and the height of the flatbed relative to the mirror.

22. I therefore find that the respondent changed lanes when it was not safe to do so, contrary to section 151(a) of the *Motor Vehicle Act*. I also find that the respondent's driving clearly fell below the standard of a reasonable driver in the circumstances. I find that the respondent was fully responsible for the accident. I order them to pay the applicant \$1,000 in damages, as agreed.

FEES, EXPENSES, AND INTEREST

23. The *Court Order Interest Act* (COIA) applies to the CRT. The parties agreed to a global amount for damages without specifying what it was for. Based on the evidence before me, I find that it was likely a combination of the applicant's deductible (which was \$500) and non-pecuniary damages for pain and suffering. Under section 2 of the COIA, prejudgment interest must not be awarded on non-pecuniary damages resulting from personal injury. As for the deductible, there is no evidence about when she paid it, but I find she likely had the repairs done at some point because she had no mirror otherwise. The respondent does not dispute this. I find it reasonable to award prejudgment interest on the \$500 deductible from February 24, 2022, the day the applicant filed the Dispute Notice, to the date of this decision. This equals \$6.47.
24. 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. As the applicant was successful, I find that she is entitled to reimbursement of her \$175 in CRT fees. The applicant also claimed \$200 in dispute-related expenses for an expert report and courier costs. However, she provided no supporting evidence for these claims, such as receipts or invoices, so I dismiss them as unproven. I dismiss the respondent's claim for CRT fees.

ORDERS

25. Within 30 days of the date of this decision, I order the respondent to pay the applicant a total of \$1,181.47, broken down as follows:
- a. \$1,000 in damages,

b. \$6.47 in prejudgment interest under the COIA, and

c. \$175 in CRT fees.

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

27. I dismiss the applicant's remaining claims. I dismiss the respondent's claim for CRT fees.

28. 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.

Eric Regehr, Tribunal Member