



# Civil Resolution Tribunal

Date Issued: January 27, 2023

File: VI-2022-001367

Type: Motor Vehicle Injury

Category: Minor Injury Determination  
and Fault & Damages

Civil Resolution Tribunal

Indexed as: *Jinks v. Coast Mountain Bus Company Ltd.*, 2023 BCCRT 71

B E T W E E N :

JOHN RAYMOND JINKS

**APPLICANT**

A N D :

COAST MOUNTAIN BUS COMPANY LTD. and JOHN DOE

**RESPONDENTS**

---

## REASONS FOR DECISION

---

Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT) about liability for personal injuries resulting from an incident that allegedly occurred on January 4, 2020.

2. The applicant, John Raymond Jinks, says he was a passenger on a bus owned by the respondent, Coast Mountain Bus Company Ltd. (CMBC). Mr. Jinks says that when he boarded the bus, he asked the driver not to start moving until he was seated. Mr. Jinks says that despite his request, the driver pulled into traffic before he had found a seat, which caused him to fall and sustain injuries.
3. Mr. Jinks says the bus' unidentified driver, the respondent named as John Doe, was negligent, and so the driver and CMBC are responsible for his injuries. Mr. Jinks claims \$1,000 in personal injury damages.
4. CMBC says there is insufficient evidence that the alleged incident occurred. CMBC says that Mr. Jinks did not report the incident for over a year, and he failed to obtain the bus' number or the driver's identity. Further, CMBC says that Mr. Jinks has provided insufficient evidence that he was injured or that his injuries were caused by the driver's negligence. CMBC says that this dispute should be dismissed.
5. Mr. Jinks is self-represented. CMBC is represented by an employee of its insurer, Insurance Corporation of British Columbia (ICBC).

## **JURISDICTION AND PROCEDURE**

6. 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 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.
7. 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.

8. 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. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
9. 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**

10. The issue in this dispute is who is responsible for the alleged January 4, 2020 incident, and if it is the respondents, whether Mr. Jinks is entitled to \$1,000 in damages.

## **BACKGROUND, EVIDENCE, AND ANALYSIS**

11. In a civil claim such as this, the applicant Mr. Jinks must prove his 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. I note that Mr. Jinks did not provide any evidence or any substantive submissions in this dispute, apart from the Dispute Notice that started this proceeding, despite having the opportunity to do so.
12. Mr. Jinks says that on January 4, 2020, he and his adult son boarded CMBC's #95 express transit bus in Vancouver, BC. He says the bus was an extra long accordion-type bus, and that he asked the driver to wait until he was safely seated before moving. Mr. Jinks says the bus was quite full, but he eventually found a bench seat

that was folded against the wall and had to be pulled down. He says he was in the process of pushing the seat into a horizontal position when the driver pulled away from the curb, causing Mr. Jinks to lose his grip on the seat and fall to the ground.

13. Mr. Jinks says that his right leg “jackknifed” when he fell, and his foot and lower leg ended up under his thigh, causing intense pain. Mr. Jinks says he cried out and the bus driver stopped so that Mr. Jinks’ son and other passengers could assist him into a seat.
14. Mr. Jinks does not say whether he spoke with the driver after his fall. It is undisputed that he did not take the driver’s name or note the bus number at the time of the alleged incident. Mr. Jinks also says he did not think to get the names of the witnesses who saw him fall.
15. Mr. Jinks’ claim against the respondents is based in negligence. It is undisputed that as the driver’s employer, CMBC is vicariously liable for the driver’s actions. To succeed in a claim for negligence, Mr. Jinks must prove four elements (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at paragraph 3):
  - a. The respondents owed him a duty of care,
  - b. The respondents failed to meet the applicable standard of care,
  - c. The respondents’ failure to meet the standard of care caused Mr. Jinks damage, and
  - d. The damages were reasonably foreseeable.
16. I find the respondents clearly owed Mr. Jinks a duty of care as a public carrier of passengers. I find the main issue is whether Mr. Jinks has established that the respondents failed to meet the applicable standard of care.
17. The standard of care a bus driver owes to passengers is the conduct that would be expected of a reasonably prudent bus driver in the circumstances. This is an objective test that takes into consideration the experience of the average bus driver and

anything the driver knew or should have known: see *Prempeh v. Boisvert*, 2012 BCSC 304. The standard of care imposed on a public carrier is a high one, but it is not perfection, nor is a bus driver effectively to be an insurer for every mishap that occurs on a bus: *Patoma v. Clarke*, 2009 BCSC 1069.

18. As noted, Mr. Jinks did not provide any supporting evidence in this dispute. CMBC submitted ICBC's file notes, which show that Mr. Jinks first called ICBC to report the bus incident on January 18, 2021, more than a year after it allegedly occurred. ICBC's file notes show that CMBC was unable to locate any documentary evidence confirming the alleged incident, due to Mr. Jinks' failure to obtain the bus number or the driver's name. There is no evidence that Mr. Jinks made any attempt to notify CMBC directly about the incident.
19. So, the only evidence that the alleged incident occurred at all, is Mr. Jinks' own account in the Dispute Notice, and the notes of his report to ICBC about the incident more than one year later. Significantly, Mr. Jinks did not provide a statement from his son, who Mr. Jinks says was present during the incident.
20. I find Mr. Jinks' assertion that he specifically asked the bus driver to wait until he was seated before moving the bus, in the absence of any supporting evidence, is insufficient to prove he made that request. Further, Mr. Jinks did not explain how long the bus driver waited before moving the bus. That is, there is insufficient evidence before me that the bus driver should have known Mr. Jinks was not yet seated before they pulled away from the curb. This is particularly so given Mr. Jinks' evidence that the bus was relatively crowded and that it was an extra long, accordion-type bus. I find Mr. Jinks has not established that the driver failed to wait a reasonable amount of time for him to be seated. Finally, there is no suggestion that the driver put the bus in motion unreasonably quickly or that they pulled away from the curb in a sharp or jerky manner.
21. Overall, I find Mr. Jinks has not established that the driver failed to meet the required standard of care in operating the bus. While I acknowledge that Mr. Jinks may have lost his balance when the bus started moving, I find he has not proven the driver was

negligent in moving the bus when they did. For that reason, I find Mr. Jinks' claim must fail.

22. Given this conclusion, I do not have to address Mr. Jinks' damages in any detail. However, I note that even if I had accepted the bus driver was negligent, I still would have dismissed Mr. Jinks' claim for a failure to prove his damages. I say this because Mr. Jinks provided no supporting evidence of his alleged injuries. Specifically, he provided no evidence that he reported an injury to any medical professional or that he attended any medical treatment. He provided no photographic evidence to support his submission that his right thigh remains red and "badly swollen". He also provided no explanation for his apparent failure to report these ongoing injuries to a doctor. So, I find Mr. Jinks has not established that he suffered an injury from the bus incident that warrants any compensation.

23. For all these reasons, I dismiss Mr. Jinks' claim.

## **FEES AND EXPENSES**

24. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to the recovery of their paid CRT fees and dispute-related expenses. The respondents were successful, and so I find Mr. Jinks must reimburse CMBC (as the only identified respondent) \$25 in paid CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

25. Within 30 days of the date of this decision, I order Mr. Jinks to pay CMBC a total of \$25 as reimbursement of CRT fees.

26. CMBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

27. I dismiss Mr. Jinks' claims.

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.

---

Kristin Gardner, Tribunal Member