



Civil Resolution Tribunal

Date Issued: June 12, 2023

File: VI-2021-009131

Type: Accident Claims

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Foxcroft v. Arora*, 2023 BCCRT 489

BETWEEN:

ROBYN FOXCROFT

APPLICANT

AND:

AARYAN ARORA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a motor vehicle accident that took place on March 21, 2021 in Surrey, British Columbia, between the applicant, Robyn Foxcroft, and the respondent, Aaryan Arora.

2. The accident happened as Ms. Foxcroft was attempting to turn left into her residential driveway while Aaryan Arora turned a corner and collided with her vehicle. Ms. Foxcroft was undisputedly injured as a result of the accident.
3. The parties are both insured by the Insurance Corporation of British Columbia (ICBC). ICBC internally determined Ms. Foxcroft was 100% responsible for the accident. ICBC is not a party to this proceeding.
4. Ms. Foxcroft argues Aaryan Arora should be held fully responsible for the accident. The parties agree, subject to my liability assessment, that Ms. Foxcroft's non-pecuniary (pain and suffering) damages total \$5,627, accelerated depreciation of her vehicle is \$1,000, and that she paid a \$500 deductible to have her vehicle repaired. Ms. Foxcroft also seeks compensation for past income loss and special damages (out-of-pocket expenses) related to the accident.
5. Aaryan Arora argues ICBC properly determined Ms. Foxcroft was solely responsible for the accident. They also agree Ms. Foxcroft suffered a loss of income, but disagree with the amount claimed. Aaryan Arora denies Ms. Foxcroft is entitled to any special damages.
6. Ms. Foxcroft is self-represented. Aaryan Arora is represented by an authorized ICBC employee.

JURISDICTION AND PROCEDURE

7. 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.
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. 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.
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, on the respondent's behalf, ICBC advised CRT staff that it intended to claim a deduction from Ms. Foxcroft's damages award, if any, 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 ICBC intended to claim a deduction, but not the type of deduction or the amount.
12. After reviewing the evidence and submissions about damages, I advised the parties through CRT staff of my damages assessment and asked for evidence and submissions about the claimed deductions and the basis for those deductions, which were provided. My decision about deductions is discussed below.

ISSUES

13. The issues in this dispute are who is responsible for the March 21, 2021 accident, and to what extent Ms. Foxcroft is entitled to her claimed damages.

BACKGROUND, EVIDENCE AND ANALYSIS

14. In a civil claim such as this, the applicant Ms. Foxcroft 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.

The Accident

15. The accident details are mostly undisputed. On March 21, 2021, Ms. Foxcroft was traveling westbound on 72A Avenue, approaching 145 Street. Before reaching the intersection, Ms. Foxcroft turned left into her residential driveway.
16. At the same time, Aaryan Arora was traveling southbound on 145 Street, turning left onto 72A Avenue.
17. It was raining and the roads were wet.
18. The intersection of 145 Street and 72A Avenue is unique. 72A Avenue terminates at 145 Street, and there is a “mini cul-de-sac” with residential homes at the southwest corner of the intersection. This means that eastbound traffic on 72A Avenue must turn right onto northbound 145 Street, and southbound traffic on 145 Street must turn left onto 72A Avenue. 145 Street and 72A Avenue are both residential two-way streets without lane markings. There are no traffic control devices at the intersection.
19. While Ms. Foxcroft was turning left into her driveway, Aaryan Arora turned the corner from southbound 145 Street onto westbound 72A Avenue, and the two vehicles collided. The front right bumper of Aaryan Arora’s vehicle struck the right rear passenger door and rear wheel well of Ms. Foxcroft’s vehicle.

Who is responsible for the accident?

20. Ms. Foxcroft says she properly turned on her left turn signal, looked for oncoming vehicles, and safely started her left turn. She argues that Aaryan Arora was speeding

and cut the corner when turning onto 72A Avenue. As a result, she says Aaryan Arora should be held responsible for the March 21, 2021 accident.

21. In contrast, Aaryan Arora argues Ms. Foxcroft failed to yield the right of way to them when starting her left turn. Aaryan Arora says ICBC correctly held Ms. Foxcroft solely responsible for the accident. In a March 1, 2022 statement to an ICBC employee, Aaryan Arora described that they saw Ms. Foxcroft's vehicle when it was approximately 3 car lengths in front of them. Aaryan Arora says that Ms. Foxcroft "abruptly" started her left turn when there was only 1 car length between their vehicles, and without using her left turn signal.
22. Ms. Foxcroft provided dash camera footage from the incident. Although the accident is not shown on the footage because of the impact location, it shows the moments immediately before the accident. I do not accept that Ms. Foxcroft turned "abruptly" in front of Aaryan Arora's vehicle, or that the vehicles were only 1 car length apart when the accident happened. Rather, I find the dash camera shows that when Ms. Foxcroft began her turn, there were no visible oncoming vehicles. Also, despite Ms. Foxcroft's assertion, I am unable to determine from the dash camera footage whether Ms. Foxcroft's turn signal was active, given the radio's volume. However, I accept her evidence that it was on, and note Aaryan Arora may have not seen it given the accident scene's layout.
23. I also find that surveillance footage from a neighbour shows the accident happened as Aaryan Arora was completing their turn from 145 Street onto 72A Avenue, though the actual impact is blocked from the camera's view by a parked cube van.
24. 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 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. First, in breach of section 166, I find Ms. Foxcroft failed to properly yield the right of way to Aaryan Arora's approaching vehicle. Although the dash camera footage does not show Aaryan Arora's vehicle, I find it shows that Ms. Foxcroft failed to stop and assess potential hazards before immediately turning into her driveway. As noted above, the accident location is unique. The parties admit that the intersection and parked vehicles along both sides of the residential roadways create obstructed views for drivers approaching the intersection. While I acknowledge Ms. Foxcroft says she "looked through" her neighbour's metal fence for traffic approaching from 145 Street, I find that was insufficient in the circumstances.
26. *Pacheco (Guardian ad litem of) v. Robinson* (1993), 1993 CanLII 383 (BCCA) sets out the obligations of a left turning driver. Although *Pacheco* involved a turn at an intersection, the court has found the decision "even more applicable" to the situation of a left turn attempted somewhere other than at an intersection (see: *Volman v. Cutts*, 2015 BCSC 298 at paragraph 19).
27. In *Pacheco*, the court found that a servient driver (the left turning driver, here, Ms. Foxcroft) has an obligation not to proceed unless the left turn can be done safely, and that the mere presence of a left turning driver does not place an extra duty on the dominant driver (here, Aaryan Arora) to take extra care. The court further said that when a servient driver disregards their statutory duty to yield the right of way, then to place any blame on the dominant driver, the servient driver must establish that the dominant driver was aware, or reasonably should have been aware, of the servient driver's disregard of the law.
28. Here, similarly to the facts in *Pacheco*, both Ms. Foxcroft's and Aaryan Arora's views were blocked due to the layout of the intersection and parked vehicles. Ms. Foxcroft, as the servient left-turning driver, was obliged to yield the right of way. I find by failing to stop or slow her vehicle before starting her left turn, Ms. Foxcroft failed to determine whether she could make the turn safely. I find Ms. Foxcroft breached section 166 of the MVA.

29. What about Aaryan Arora's obligations? Although Ms. Foxcroft argues Aaryan Arora was speeding and "cut the corner" when turning from 145 Street to 72A Avenue, I find this is not supported by the evidence. Aaryan Arora specifically denies speeding, and I find the surveillance footage is insufficient to make a finding about Aaryan Arora's speed or vehicle placement while in the intersection. However, as noted, I do not accept Aaryan Arora's argument that Ms. Foxcroft abruptly turned her vehicle while their vehicle was 1 car length away. Ms. Foxcroft argues that had Aaryan Arora been driving with due care and attention, they would have seen Ms. Foxcroft's vehicle having nearly completed its left turn.
30. Here, given the intersection's layout and residential location, I find that a reasonably prudent driver would proceed around the somewhat blind turn from 145 Street to 72A Avenue cautiously, especially given the road conditions. The neighbour's surveillance video shows that Aaryan Arora did not bother to slow their vehicle as they approached the intersection or while they traveled through it. While it is impossible to determine from the footage Aaryan Arora's actual speed, I would not describe it as slow or cautious, and I find it appears they maintained a consistent speed, perhaps even accelerating through the turn.
31. I find Aaryan Arora's actions fell below the standard of a reasonably prudent driver. For these reasons, I find Aaryan Arora was not driving with the care and attention the circumstances required, in breach of section 144 of the MVA.
32. I find both Ms. Foxcroft's and Aaryan Arora's breaches of the MVA contributed to the March 21, 2021 accident, and I find them each equally responsible for it.
33. I turn then to Ms. Foxcroft's claimed damages.

Damages

34. As noted, the parties partially agree on Ms. Foxcroft's damages, subject to my liability assessment. Specifically, they agree that Ms. Foxcroft's non-pecuniary damages are \$5,627, damages for accelerated depreciation are \$1,000, and that she paid a \$500 insurance deductible. As I have found Ms. Foxcroft 50% responsible for the March

21, 2021 accident, it follows that her award for these heads of damage is reduced by the same percentage.

35. I turn to Ms. Foxcroft's other damages claims.

Past Income Loss

36. Ms. Foxcroft works as a Licensed Practical Nurse and claims for past income loss. Aaryan Arora acknowledges that Ms. Foxcroft's gross loss of earnings due to the March 21, 2021 accident is \$8,089.87, of which \$5,829.14 was paid sick time, \$2,161.31 was unpaid sick time, and \$99.42 was the result of lost part-time statutory pay. The CRT is unique from a court in that it requires parties to claim a specific monetary figure to successfully file their application for dispute resolution. Given the nature of personal injury claims, I appreciate these monetary claims may change from the time the applicant files their application for dispute resolution to the time the dispute is adjudicated. So, although Ms. Foxcroft only claimed \$5,615.85 in the Dispute Notice filed on November 30, 2021, the evidence provided by her employer about her lost income of \$8,089.87 is dated June 6, 2022. Given Aaryan Arora had notice of this increase, and provided evidence and submissions about the increased monetary figure, I accept I properly have before me Ms. Foxcroft's \$8,089.87 claim for past income loss.

37. In any event, Aaryan Arora argues that Ms. Foxcroft is only entitled to \$1,809.44, which they say is Ms. Foxcroft's unpaid time off work, minus 14.5% for taxes and Employment Insurance (EI). However, Aaryan Arora incorrectly calculated this amount. This should equal \$1,847.92 (\$2,161.31 x 14.5%). Regardless, I disagree with Aaryan Arora's assessment of Ms. Foxcroft's income loss.

38. First, Aaryan Arora argues that Ms. Foxcroft is not entitled to reimbursement for the \$5,829.14 of sick time because she was paid by her employer. They argue section 83 of the *Insurance (Vehicle) Act* (IVA) requires that any benefits paid must be deducted from Ms. Foxcroft's loss, including benefits from "insurance". However, there is no indication that Ms. Foxcroft was paid by an insurer. Ms. Foxcroft

specifically says she does not qualify for short term disability and did not receive any long-term disability. Rather, the evidence is that her employer paid the \$5,829.14 out of her banked sick time.

39. Courts have long recognized the loss of sick bank credits as a compensable loss (see: *Bjarnson v. Parks*, 2009 BCSC 48 and *Palangio v. Tso*, 2017 BCSC 1573). It is undisputed Ms. Foxcroft used her sick bank time to assist in her recovery. While Ms. Foxcroft was not out of pocket for the \$5,829.14, there is no logical reason she should not be compensated for this time spent recovering from her accident injuries, as opposed to using the time for other illnesses, or having it paid out (see: *Palangio*, at paragraph 273).
40. In her reply submissions, Ms. Foxcroft asks that I order the used sick time to be paid back to her employer for her future use. That remedy is outside the CRT's accident claims jurisdiction. However, I find Aaryan Arora must reimburse Ms. Foxcroft for her full past income loss of \$8,089.87, minus applicable deductions.
41. Ms. Foxcroft argues that income tax and EI should not be deducted from the past income loss award as it may result in those deductions being applied twice. A Certificate of Earnings signed by her employer says that the \$8,089.87 is Ms. Foxcroft's gross lost pay, meaning it has not been subject to any deductions for income tax or EI. Further, section 95 of the IVA says that income tax and EI benefits must be deducted from the gross income loss a person suffers result of an accident. So, I find income tax and EI must be deducted.
42. Ms. Foxcroft does not dispute the 14.5% figure, and I find it is reasonable. So, I find Ms. Foxcroft's net past income loss is \$6,916.84. As noted above, any damages award must be reduced by 50% consistent with Ms. Foxcroft's level of responsibility. I award Ms. Foxcroft \$3,458.42 for past income loss.

Special Damages

43. Ms. Foxcroft claims \$473.45 in special damages for the amount she had to pay for various rehabilitation therapies above what ICBC reimbursed her for. I note the receipts in evidence only total \$454.50, however nothing turns on this given my findings below.
44. Section 88(1) and Schedule 3.1 of the *Insurance (Vehicle) Regulation* (IVR) set out the prescribed amounts for certain “health care loss” expenses, which includes physiotherapy, massage therapy, and acupuncture treatments. These prescribed amounts are what ICBC is obligated to reimburse individuals for approved treatment under their first-party insurance, even if the treatment costs more than the prescribed amount. The amount paid over the prescribed amount is generally referred to as a “user fee”.
45. Section 82.2(2) of the IVA says that, in an action for damages, a person may not recover an amount that is more than the amount established or determined for the particular health care loss under the IVR. I find the effect of this section is that applicants such as Ms. Foxcroft are not entitled to claim “user fees” as damages, as the legislation provides they are limited to recovery of only the prescribed amount. Ms. Foxcroft was undisputedly reimbursed the prescribed amount for each of her treatments. So, I find Ms. Foxcroft is not entitled to any further reimbursement for the remaining “user fees”.
46. Ms. Foxcroft also said she is out of pocket for wear on her vehicle and extra gas for driving to and from her treatments. Individuals injured in motor vehicle accidents are generally eligible for reimbursement for things like mileage, but Ms. Foxcroft did not provide any evidence or submissions about the distance from her home to the various clinics. So, I make no award for mileage expenses.

Deductions

47. As noted above, after I made my decision on Ms. Foxcroft’s damages award, I provided the parties with an opportunity to make submissions on any potential

deductions. Aaryan Arora argues that because Ms. Foxcroft was paid \$5,829.14 by her employer out of Ms. Foxcroft's sick bank time, that amount must be deducted from any award for past income loss under section 83 of the IVA. This is the same argument Aaryan Arora made in its initial submissions, which I have already addressed above.

48. I find Aaryan Arora has not proven they are entitled to any deduction from Ms. Foxcroft's damages award.

SUMMARY

49. In summary, Ms. Foxcroft is awarded the following, taking into account the 50/50 apportionment of liability between the parties:

Non-pecuniary damages	\$2,813.50
Past income loss	\$3,458.42
Accelerated depreciation	\$500.00
Deductible refund	\$250.00
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Total	\$7,021.92

50. Pre-judgment interest and reimbursement for tribunal fees and dispute-related expenses are also payable to Ms. Foxcroft, as discussed below.

FEES, EXPENSES AND INTEREST

51. The *Court Order Interest Act* applies to Ms. Foxcroft's awards for past income loss and deductible refund. Calculated from the date Ms. Foxcroft filed her application for dispute resolution, a date I find reasonable in the circumstances, this amounts to \$115.22.
52. Further to section 2(a) of the *Court Order Interest Act*, pre-judgment interest must not be awarded on pecuniary (monetary) losses that arise after the date of the order. Since it is undisputed Ms. Foxcroft still owns her vehicle, I find she has not yet

suffered a pecuniary loss for accelerated depreciation. So, she is not entitled to pre-judgment interest on the award for accelerated depreciation. Additionally, section 2(e) says pre-judgment interest must not be paid on non-pecuniary damages resulting from personal injury, or on costs (CRT fees and dispute-related expenses).

53. 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. Foxcroft was partially successful, I find she is entitled to reimbursement of \$87.50, which is half of her paid tribunal fees. Aaryan Arora was primarily unsuccessful, so I dismiss their claim for reimbursement of tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

54. Within 21 days of the date of this decision, I order Aaryan Arora to pay Ms. Foxcroft a total of \$7,224.64, broken down as follows:
- a. \$7,021.92 in damages,
 - b. \$115.22 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$87.50 in tribunal fees.
55. Ms. Foxcroft is also entitled to post-judgment interest, as applicable.

56. 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