



Civil Resolution Tribunal

Date Issued: October 23, 2023

Files: VI-2022-008317
and VI-2022-006570

Type: Accident Claims

Category: Minor Injury Determination
and Liability & Damages

Civil Resolution Tribunal

Indexed as: *Brown v. Spankie*, 2023 BCCRT 906

B E T W E E N :

JENNIFER BROWN

APPLICANT

A N D :

TROY DAVID SPANKIE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin, Vice Chair

INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT).

2. The applicant, Jennifer Brown, says they were putting gas in their car on July 22, 2022, when they were struck by a pipe and injured. They say the respondent, Troy David Spankie, was driving the vehicle towing the trailer that contained the pipe when the applicant was struck.
3. In dispute VI-2022-008317 the applicant seeks a minor injury determination. In dispute VI-2022-006570, the applicant claims \$44,000 in personal injury damages, including non-pecuniary damages, income loss, future care costs, and out-of-pocket expenses.
4. The respondent denies the applicant was struck by the pipe or injured and denies any accident.
5. The question before me in this decision is whether the applicant's claims are statute-barred under section 115 of the *Insurance (Vehicle) Act* (IVA).
6. The applicant is self-represented. The respondent is represented by a lawyer, Iain Hallam.

JURISDICTION AND PROCEDURE

7. These are the CRT's formal written reasons. The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(b) of the CRTA gives the CRT exclusive jurisdiction over the determination of whether an injury is a "minor injury" under the IVA. 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 in an accident claim, up to \$50,000, in certain circumstances.
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.

9. 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.
10. Section 42 of the CRTA says 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.

ISSUE

11. The issue in this decision is whether the applicant's claims are statute-barred and therefore must be dismissed.

EVIDENCE AND ANALYSIS

12. In making this decision I have reviewed the Dispute Notices, the Dispute Responses, and the respondent's submissions. The applicant did not provide any submissions, despite being invited to do so.
13. As of May 1, 2021, British Columbia's vehicle insurance scheme changed. Part of the changes included an amendment to the IVA to impose a general ban on individuals bringing actions for bodily injuries (meaning personal injury) arising from vehicle accidents. Section 114 of the IVA says these changes apply to accidents that occur on or after May 1, 2021.
14. Section 115 of the IVA specifically says:
 - a. A person has no right of action and must not commence or maintain proceedings respecting bodily injury caused by a vehicle arising out of an accident, and

- b. No action or proceeding may be commenced or maintained respecting bodily injury caused by a vehicle arising out of an accident.
- 15. The IVA defines “bodily injury caused by a vehicle” to mean bodily injury caused by a vehicle or the use or operation of a vehicle. At paragraph 17 of *Amos v. Insurance Corp. of British Columbia*, 1995 CanLII 66 (SCC), the court set out the following test to determine whether injuries arose out of the use or operation of a vehicle.
 - a. Did the accident result from the ordinary and well-known activities to which automobiles are put?
 - b. Is there some nexus or causal relationship (not necessarily a direct or proximate causal relationship) between a plaintiff’s injuries and the use or operation of a vehicle, or is the connection between the injuries and the use or operation of a vehicle merely incidental or fortuitous?
- 16. If the applicant’s version of events is correct, then the respondent was driving their vehicle when a pipe in the attached trailer struck the applicant. In that situation, I find the respondent’s driving of their vehicle, and towing of the trailer, is an ordinary use and operation of the vehicles. I further find that the connection between the applicant’s alleged injuries from the pipe is not incidental to the respondent’s driving of their vehicle. But for the respondent driving the vehicle past the applicant, the applicant would not have been allegedly struck by the pipe extending from the respondent’s trailer. In other words, even if the applicant’s version of events is proven, I find any injuries they suffered would fall within the IVA’s definition of “bodily injury caused by a vehicle”.
- 17. Several exceptions to the IVA section 115 ban are listed in section 116 of the IVA and section 13 of the *Enhanced Accident Benefits Regulation*. However, I find none apply here.
- 18. As noted, the accident allegedly occurred on July 22, 2022. Given section 115 of the IVA, I find that the applicant’s claims against the respondent for personal injury damages are statute-barred and must be dismissed.

19. Nothing in this decision prohibits the applicant from filing a claim or starting an action against the Insurance Corporation of British Columbia for accident benefits related to their accident injuries, subject to any applicable limitation period.
20. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As the successful party, the respondent paid no CRT fees. Although the respondent claimed dispute-related expenses generally, they did not claim any specific amount, explain what those expenses were or provide any supporting evidence. So, I find the respondent's claim for dispute-related expenses unproven and dismiss it.

ORDER

21. I dismiss the applicant's claims, the respondent's claim for dispute-related expenses, and this dispute.

Sherelle Goodwin, Vice Chair