



# Civil Resolution Tribunal

Date Issued: December 7, 2023

File: VI-2023-005725

Type: Accident Claims

Category: Minor Injury Determination  
and Liability & Damages

Civil Resolution Tribunal

Indexed as: *Wang v. Coast Mountain Bus Company Ltd.*, 2023 BCCRT 1074

B E T W E E N :

JUN XUE WANG

**APPLICANT**

A N D :

COAST MOUNTAIN BUS COMPANY LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin, Vice Chair

## INTRODUCTION

1. This is a final decision of the Civil Resolution Tribunal (CRT), dismissing the applicant's claims.

2. The applicant, Jun Xue Wang, says her foot was crushed when a bus driver negligently lowered the bus's mechanical lift onto her foot on October 16, 2022. The applicant asks the CRT to determine that her injuries were not minor. Additionally, the applicant claims \$29,000 in personal injury damages, for pain and suffering and income loss.
3. The bus driver was an employee of the respondent, Coast Mountain Bus Company Ltd. The respondent says the applicant's claims are statute-barred under sections 114 and 115 of the *Insurance (Vehicle) Act* (IVA). As explained below, I agree with the respondent.
4. The respondent is insured by the Insurance Corporation of British Columbia (ICBC). An ICBC employee represents the respondent. The applicant is represented by someone other than a lawyer.

## **JURISDICTION AND PROCEDURE**

5. 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.
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.
7. 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

8. The issue in this decision is whether the applicant's claims must be dismissed because they are statute-barred.

## EVIDENCE AND ANALYSIS

9. In making this decision I have reviewed the Dispute Notice, Dispute Response, and both parties' submissions on this issue.
10. 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.
11. 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.
12. 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 2-part 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?

13. Through CRT staff, I asked the parties to explain exactly what happened on October 16, 2022. I said useful information would include whether the applicant was getting on or off the bus at the time of the incident. I also asked both parties to provide a copy of any statement the applicant previously gave to ICBC about the incident. Neither party provided any such document.
14. The applicant did not explain whether she was getting on or off the bus at the time of the incident. She said the bus was not operating as a vehicle, because it was stationary when the operator closed the heavy lift onto the applicant's foot. The applicant said the mechanical lift was used for physically disabled persons or wheelchairs to board the bus. Based on this description, I find the lift is likely part of the entrance or exit to the bus. In the absence of any evidence or explanation to the contrary, I also find it reasonable to infer that only passengers boarding or exiting the bus would be close enough to the bus entry such that the lift could crush their foot. So, I find it likely that the applicant was in the process of boarding, or exiting the bus, when her foot was crushed.
15. The applicant argues that the bus was not operating as a vehicle during the incident as it was stationary instead of moving and did not collide with anything. She also says the lift mechanism is heavy equipment, similar to a truck mounted crane or drill. I disagree.
16. The first part of the *Amos* test is often referred to as the purpose test. At paragraph 18 of *Amos*, the court distinguished "use" from "operation". The court specifically referred to the entrance and exit of passengers from a bus. The court specifically said that if passengers were injured because the bus steps were defective, those injuries would arise out of the "use or operation" of the vehicle. Following the reasoning in *Amos*, I find that operating the mechanical lift used to assist passengers in exiting and entering the bus is included in "use or operation". So, I find the applicant's injuries

arose out of the use or operation of the bus, even though it was stationary at the time of the accident.

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 happened on October 16, 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. As a result, I find the applicant's claim for a minor injury determination is moot (meaning "of no legal consequence").
20. A claim is "moot" when there is no longer a live controversy between the parties. The issue is no longer live when it becomes theoretical or academic. In other words, deciding the issue would have no practical application to the parties. While the courts, and tribunals like the CRT, will generally dismiss a moot claim, the CRT has discretion to decide the dispute if doing so would have a practical impact and potentially help avoid future disputes (see *Binnarsley v. BCSPCA*, 2016 BCCA 259).
21. As I have dismissed the applicant's claim for personal injury damages, I find a determination about whether the applicant's injuries are minor is purely academic in nature. This is because, under the *Minor Injury Regulation*, non-pecuniary (pain and suffering) damages for minor injuries are capped at a maximum amount. If the applicant no longer has a claim for damages, it does not matter whether the non-pecuniary damages are capped because she will not receive any amount of damages for her injuries.
22. Nothing in this decision prohibits the applicant from filing a claim or starting an action against ICBC for accident benefits related to her accident injuries, subject to any applicable limitation period.

23. 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, I find the respondent is entitled to the \$25 CRT fee it paid. The respondent claimed no dispute-related expenses.

## **ORDERS**

24. I dismiss the applicant's claims.

25. I order the applicant to reimburse the respondent \$25 for CRT fees, within 30 days of this decision.

26. The respondent is entitled to post-judgment interest, as applicable.

27. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court or the British Columbia Provincial Court if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court in which it is filed.

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Sherelle Goodwin, Vice Chair