



Civil Resolution Tribunal

Date Issued: March 1, 2019

File: SC-2018-002321

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McEneany v. Macey*, 2019 BCCRT 247

B E T W E E N :

Brian McEneany

APPLICANT

A N D :

Elizabeth Macey

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Brian McEeany says the respondent Elizabeth Macey is at fault for a motor vehicle accident between them. He says ICBC made an incorrect internal determination that he was responsible for the accident. He asks that I assign fault to the respondent and order her to pay him \$2,500.

2. The respondent says the accident was caused by the applicant, because the rear vehicle must maintain a far enough distance behind to be able to stop safely. She says the applicant failed to do so and hit the respondent's car from behind.
3. The applicant is self-represented. The respondent is represented by ICBC representatives Tammy Huh and Lynn Boutroy.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 9. The issue in this dispute is whether the applicant or the respondent is liable for the motor vehicle accident between their vehicles.

EVIDENCE AND ANALYSIS

- 10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.
- 11. The applicant was driving southbound on Cambie Street in Vancouver behind the respondent's pickup truck. There was construction in the right two lanes. Only the left lane was open to traffic. A vehicle merged in front of the respondent. She slowed down. Her vehicle was struck from behind by the applicant's vehicle.
- 12. The accident occurred at around 12:45 p.m., during daylight hours, in rainy conditions.
- 13. Section 162 of the *Motor Vehicle Act* requires a driver not to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of vehicles and the amount and nature of traffic on and the condition of the highway.
- 14. The courts have consistently held that the onus is on the rear-ending driver to prove the collision was not their fault. In *Wright v. Mistry*, 2017 BCSC 239 and *Skinner v. Fu*, 2010 BCCA 321, the courts concluded that as a general rule the rear driver will be liable for a rear-end collision, because "**normally a sudden stop does not create an unreasonable risk of harm**" (my bold emphasis added).

15. The courts have held that it is open to the rear driver to offer an explanation as to how the collision could have occurred without his negligence, but the applicant bears the onus of proving this.
16. Section 162 means that the onus is on the rear vehicle to maintain a safe stopping distance. Here, the applicant should have accounted for the rainy conditions, and the lane limitations caused by construction, to leave enough distance to stop without hitting the respondent's vehicle. He did not do so.
17. The applicant argues that the collision occurred without his negligence, because the respondent's brake lights were not working. He says there is video evidence showing that the respondent's rear tail light was not working at the time of the accident.
18. I disagree. The video shows only that the respondent's brake lights were not working after the accident. There is no evidence to establish, on a balance of probabilities, that the respondent's brake lights were not working at the time of the accident. I find that the applicant has not met the onus upon him to demonstrate that the collision occurred without him following too closely.
19. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. The respondent paid no tribunal fees so I make no order in this regard.

ORDERS

20. I dismiss the applicant's claims and his dispute.

Julie K. Gibson, Tribunal Member

