



Civil Resolution Tribunal

Date Issued: April 17, 2019

File: SC-2018-007290

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Bear Valley Ranch Ltd v. Crawford*, 2019 BCCRT 475

B E T W E E N :

Bear Valley Ranch Ltd

APPLICANT

A N D :

Don Crawford

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Bear Valley Ranch Ltd says that the respondent Don Crawford struck and killed one of its black Simmental Cross bull calves, with his vehicle. The applicant claims \$2,500, which it says is the calf's value.

2. The respondent says he was not negligent because the calf ran in front of his vehicle suddenly. The respondent asks that the dispute be dismissed.
3. The applicant is represented by principal or employee Lindy Gilson. The respondent is represented by ICBC representative Lynn Boutroy.

JURISDICTION AND PROCEDURE

4. 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.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me.
6. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I decided to hear this dispute through written submissions.
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.

ISSUE

9. The issue in this dispute is whether the respondent must pay the \$2,500 claimed by the applicant.

EVIDENCE AND ANALYSIS

10. This is a civil claim in which the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence and submissions but refer to them here only as necessary to explain my decision.
11. On October 2, 2016, the applicant's calf was hit and killed by the respondent's vehicle, on a forestry road in the middle of the applicant's Crown Range Tenure, about 1 kilometre from the applicant's private property, southeast of Quesnel, BC.
12. The parties agree that the calf had a right to be where it was. The applicant had posted signs warning that livestock was "at large" in the area in the area.
13. The respondent says that he was driving westbound at around 7:30 p.m. on October 2, 2016, the calf ran out on to the road from the woods, from the north side, and came toward his truck at high speed. He says he swerved to avoid it but could not avoid the impact. There was damage to his passenger headlight and plastic around this area, as well as the panel above the passenger side front wheel.

14. Based on the photographs the applicant filed in evidence, I find that the respondent's licence plate was dislodged in the collision and remained on the ground at the scene.
15. The respondent noticed he was losing radiator fluid. Because he was still 30 kilometers from cellular phone reception, the respondent decided to continue into town. The applicant disputes this and says that there was cellular coverage in the area. However, no other evidence was filed to demonstrate whether there was cellular coverage. I do not find it necessary to make a finding on this point.
16. The applicant learned of the dead calf from a couple who saw it at the roadside and came to tell them.
17. The applicant says the respondent is liable for the replacement cost of the calf because he was negligent when his car struck the calf, killing it.
18. The applicant argues that the Insurance Corporation of BC (ICBC) completed its investigation without looking at any photographs or visiting the site of the crash. The applicant says ICBC relied only on a statement from the respondent and his passenger. No one provided copies of the respondent or his passenger's statement to ICBC.
19. The applicant says that the respondent must not have stopped at the site of the collision because, if he had, he would have retrieved his license plate. Given that it was dark when the collision occurred, I find that the fact that the license plate was left at the scene does not prove that the respondent failed to stop. I say this because the photographs filed in evidence show the road to be poorly lit, and the collision occurred in the evening. I find that there was no street lighting.
20. The applicant also argues that the tire tracks shown in the photographic evidence are inconsistent with Mr. Crawford's evidence that he swerved to avoid the calf.
21. The vehicle debris in the photographs is lying along the north side of the road. If the respondent was driving westbound, this suggests he was driving on the right-hand

side of the road in the time leading up to the collision, which is where his car was supposed to be travelling.

22. I find that the photographic evidence of tire tracks is inconclusive about whether the respondent swerved to avoid the calf. There is no way to tell which tracks were made by his vehicle before the collision, as distinct from tracks made his vehicle after the collision, or by vehicles that drove through afterward.
23. The *Motor Vehicle Act*, at section 144(1)(c) says that persons operating motor vehicles on highways must not drive at a speed that is excessive relative to the road, traffic, visibility or weather conditions. However, a person is not necessarily operating their vehicle contrary to section 144 simply because a collision has occurred.
24. Here, the burden is on the applicant to prove that the respondent was operating his vehicle negligently at the time of the collision. I find that the applicant has not met this burden, particularly given the evening driving conditions and the respondent's evidence that the calf was scared by something and ran into the road suddenly. I am unable to find the respondent was driving at an excessive speed or otherwise negligently, when he struck the calf particularly, given that the area was poorly lit.
25. While the loss of the calf is sad and unfortunate, I cannot find the respondent liable for it, based on the evidence. The applicant also did not file evidence to prove the calf's value.
26. 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. As the successful respondent paid no tribunal fees, I make no order in this regard.

ORDER

27. I dismiss the applicant's claims and this dispute.

Julie K. Gibson, Tribunal Member