



# Civil Resolution Tribunal

Date Issued: May 8, 2019

File: SC-2018-007158

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Gonzalez Lomeli v. Mahal et al*, 2019 BCCRT 543

B E T W E E N :

Julia Gonzalez Lomeli

**APPLICANT**

A N D :

Sukhdeep Kaur Mahal and Zeng Chongyang

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Eric Regehr

## INTRODUCTION

1. This is a dispute about a motor vehicle accident that occurred on October 12, 2017. The parties were all driving eastbound on East 41<sup>st</sup> Street in Vancouver, which has 2 lanes in each direction. The vehicle driven by the respondent, Sukhdeep Kaur Mahal, struck the rear of the vehicle driven by the applicant, Julia Gonzalez Lomeli. The applicant alleges that Ms. Mahal is partially responsible for the accident

because she was speeding. The applicant alleges that the respondent, Zeng Chongyang, is partially responsible for the accident because he cut her off.

2. The respondents' insurer, the Insurance Corporation of British Columbia (ICBC), assessed the applicant 100% fault for the accident. The applicant claims that she was not at fault and seeks \$5,000. She also asks for orders that Ms. Mahal admit that she knew Mr. Chongyang was at fault, that Ms. Mahal admit that she was speeding, and that Mr. Chongyang be held accountable for his actions.
3. The applicant is self-represented. The respondents are each represented by a separate ICBC adjuster.

## **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. In some respects, this dispute amounts to a "he said, she said" scenario with each calling into question the credibility of the other. 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. 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 therefore decided to hear this dispute through written submissions.

6. The applicable tribunal rules are those that were in place at the time this dispute was commenced.
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 9.3(2), 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 issues in this dispute are:
  - a. Who is liable for the accident?
  - b. If the applicant is not fully liable for the accident, what remedy is appropriate?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this, the applicant must prove her case on a balance of probabilities. While I have read all of the parties' evidence and submissions, I only refer to what is necessary to explain and give context to my decision.
11. The following facts are undisputed. On the morning of October 12, 2017, the parties were each driving eastbound on East 41<sup>st</sup> Street in Vancouver. Prior to the accident,

the applicant and Mr. Chongyang were driving in the left lane, with Mr. Chongyang ahead of the applicant. Ms. Mahal was driving in the right lane behind the applicant. The applicant and Mr. Chongyang both changed lanes. Either during or after the applicant's lane change, Ms. Mahal's vehicle struck the applicant's vehicle from behind. The parties agree on little else. There are no independent witnesses to the accident. I will go over each party's version of events.

12. The applicant says that as she approached a cross street, Clarendon Street, she saw 3 vehicles stopped at a green light in the left lane. The front car was waiting to turn left. The applicant decided to change lanes to avoid the stopped traffic so she shoulder-checked and saw a bus driving in the right lane. At this point, she says that she was approximately 30 meters from the stopped cars. She slowed down to 10 km/h and waited 2 seconds after the bus passed before beginning her lane change. At this point, she was approximately 4 car lengths behind Mr. Chongyang's vehicle, which was still in the left lane. She completed the lane change at around St. Margarets Street, which is the side street immediately before Clarendon Street. The applicant travelled for 4 to 5 seconds while speeding up to 30 km/h. Mr. Chongyang abruptly cut her off by suddenly changing from the left lane to the right lane. The applicant slammed on the brakes and swerved to the right to avoid a collision with Mr. Chongyang. However, 2 seconds later, Ms. Mahal struck the applicant's car from behind.
13. Ms. Mahal says that she was driving in the right lane and saw that the cars in the left lane were stopped. She saw that the applicant's vehicle had a right hand signal on and so Ms. Mahal slowed down. The applicant began changing lanes. When the applicant's vehicle was halfway into the right lane, Ms. Mahal saw Mr. Chongyang's vehicle also try to change into the right lane, causing the applicant to suddenly brake. Ms. Mahal tried to stop but she struck the applicant's vehicle from behind, with her front left bumper striking the applicant's rear right bumper.
14. Mr. Chongyang says that as he approached the backed up traffic in the left lane, he decided to change lanes. He signaled and shoulder checked. He saw traffic coming

so he waited. After a bus passed, he slowly moved into the right lane. Right after he made the lane change, he heard a bang and stopped. His vehicle was not struck. At the time of the impact, the applicant's vehicle was about 1 car length behind his vehicle. He recognized the applicant's car because she had been behind him in the left lane. He says that she was not in the right lane when he moved began changing lanes, so she must have started changing lanes close to the same time he did.

15. ICBC assessed the applicant 100% at fault for the accident. ICBC concluded that the applicant changed lanes contrary to section 151(a) of the *Motor Vehicle Act* (MVA), which prohibits drivers from changing lanes over a broken line unless the driver has determined that the lane change will "in no way affect the travel of another vehicle". In this dispute, the respondents each rely on section 151(a) in their submissions.
16. Faced with conflicting evidence from the parties, it is impossible to know with certainty what happened. I must assess the credibility of the parties and the reliability of their evidence to determine the most likely sequence of events that led up to the accident. Credibility is about whether a person is being fully truthful in their evidence. Reliability is about whether a person's evidence is accurate, regardless of their intentions.
17. I find that Ms. Mahal's evidence is more credible and reliable than that of the applicant or Mr. Chongyang. I find that the applicant began changing lanes, which caused Ms. Mahal to begin slowing down. I find that partway through the applicant's lane change, Mr. Chongyang also changed lanes, which caused the applicant to suddenly brake. I find that Ms. Mahal did not have an opportunity to ensure that she was travelling at a safe distance and was unable to stop in time. My reasons follow.
18. With respect to reliability, Ms. Mahal was the rear vehicle of the 3 involved in the accident. As a result, I find that Ms. Mahal was in the best vantage point to observe the events leading up to the accident.

19. With respect to credibility, the applicant's statement includes very specific evidence about distances and times. According to her evidence she completed her lane change around St. Margarets Street and the accident occurred before Clarendon Street. Given the short distance between these 2 streets and the fact that she says that she was only 30 metres behind the stopped vehicles when she began slowing down to change lanes, I do not accept that the applicant's description of events is plausible. I find that applicant's evidence exaggerates the amount of time and space she had to change lanes.
20. In addition, I note that the applicant does not dispute that Ms. Mahal slowed down when she saw the applicant put on her signal light. She relies on Ms. Mahal's evidence as proof that Ms. Mahal had decided to "let" the applicant change lanes. This fact weakens the applicant's position because if I accepted the applicant's evidence, there have been no need for Ms. Mahal to slow down to permit the applicant's lane change. This fact, which again the applicant does not dispute despite providing detailed evidence, supports the conclusion that the applicant breached section 151(a) of the MVA.
21. I also find that Ms. Mahal's statement that she had begun to slow down is against her own interest, which makes her account more credible. If Ms. Mahal were going to fabricate evidence to avoid liability, it is more likely that she would have alleged that the applicant cut her off.
22. The applicant also relies on the damage to her vehicle and Ms. Mahal's vehicle as proof that Ms. Mahal's evidence cannot be true. The damage to Ms. Mahal's vehicle is on the left front bumper, just under the left headlight. The damage to the applicant's vehicle was on the right rear side. The applicant says this damage is inconsistent with the allegation that she was part way through a lane change because if she were changing lanes, Ms. Mahal would have hit the side of her vehicle. I disagree with the applicant. After reviewing the photographs of the damage, I find that the location of the damage is equally consistent with the applicant's and Ms. Mahal's accounts of the accident.

23. Therefore, I accept Ms. Mahal's evidence that she slowed down when she saw the applicant signal her lane change. I find that the applicant breached section 151(a) of the MVA because the lane change affected Ms. Mahal's driving by causing her to slow down.
24. As for Mr. Chongyang's evidence, I find that it is conspicuous that he never mentions seeing Ms. Mahal's vehicle. Given that he changed lanes right after the bus passed and that he heard the bang of the accident very shortly after he changed lanes, I find that Ms. Mahal's vehicle was there for him to see. I also find that section 151(a) of the MVA required him to refrain from a lane change if it would affect the applicant, who I find started her lane change before Mr. Chongyang because the bus passed the applicant first. Therefore, I find that Mr. Chongyang also breached section 151(a) of the MVA.
25. As for whether Ms. Mahal was negligent, I acknowledge that in many cases, there is an "inference of negligence" when a party rear ends another vehicle. However, it is not automatic that a rear-ending party is liable for an accident: *Singleton v. Morris*, 2010 BCCA 48. I find that the applicant entered the right lane too close to Ms. Mahal's vehicle such that Ms. Mahal could not react in time to the applicant's sudden stop. In other words, she had no opportunity to ensure that she was travelling at a safe distance behind Ms. Mahal. I find that Ms. Mahal was not liable for the accident.
26. When more than one person is responsible for a motor vehicle accident, apportioning liability between them does not depend on the degree to which each party caused the accident. Rather, apportionment is made based on "blameworthiness", which is the degree to which each party's conduct fell below the standard of care.
27. I find that Mr. Chongyang's conduct is more blameworthy than the applicant's conduct. While both the applicant and Mr. Chongyang failed to properly assess whether they could safely change lanes without affecting other vehicles, the applicant's breach only caused Ms. Mahal to slow down. In contrast, Mr.

Chongyang's breach forced the applicant to brake suddenly. I therefore find that Mr. Chongyan's breach was more severe than the applicant's breach.

28. I find that Mr. Chongyang is 75% at fault for the accident and the applicant is 25% at fault for the accident.
29. Turning to the appropriate remedy, the applicant paid a \$300 deductible for the repairs to her vehicle. Her collision insurance covered the remainder. There is no evidence about the effect of the accident on the applicant's insurance premiums. I therefore order Mr. Chongyang to reimburse the applicant for 75% of her deductible of \$300 for a total of \$225. I find that there is no basis in the evidence to reimburse the applicant for anything further. I dismiss the rest of the applicant's monetary claim.
30. The applicant also asks for orders that the 2 respondents each admit that they were partially responsible for the accident. I find that there is no utility in orders that the parties make admissions because they would not be genuine. She also asks for an order that Mr. Chongyang be held accountable for his actions. I find that this requested order is vague and unhelpful. I dismiss these claims.
31. 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. The applicant was partially successful. I find the applicant is entitled to reimbursement of half of her tribunal fees of \$175 for a total of \$87.50. The applicant did not claim any dispute-related expenses.

## **ORDERS**

32. Within 30 days of the date of this order, I order Mr. Chongyang to pay the applicant a total of \$317.34, broken down as follows:
  - a. \$225 as reimbursement for 75% of the applicant's deductible,
  - b. \$4.84 in pre-judgment interest under the *Court Order Interest Act*, and



c. \$87.50 in tribunal fees.

33. The applicant is entitled to post-judgment interest, as applicable.
34. The applicant's remaining claims are dismissed.
35. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Eric Regehr, Tribunal Member