



# Civil Resolution Tribunal

Date Issued: May 31, 2019

File: SC-2018-008582

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Li v. Insurance Corporation of British Columbia et al*, 2019 BCCRT 662

**B E T W E E N :**

Wen Sheng Li

**APPLICANT**

**A N D :**

Insurance Corporation of British Columbia, South Coast British Columbia Transportation Authority, Coast Mountain Bus Company Ltd., Steven Lum, and Jennifer Pook

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

## **INTRODUCTION**

1. The applicant, Wen Sheng Li was involved in a car accident for which the respondent, Insurance Corporation of British Columbia (ICBC), found him 100 percent at fault.

2. The respondent, Jennifer Pook, was injured in the accident while she was a passenger on a bus operated by the respondent Coast Mountain Bus Company Ltd. (Coast Mountain) for the respondent South Coast British Columbia Transportation Authority (TransLink). The respondent Steven Lum was driving the bus at the time of the accident.
3. The applicant says he was not negligent and that it was Coast Mountain and TransLink who are liable for the accident. He wants the tribunal to overturn ICBC's liability assessment, and he wants to be compensated \$2,500.
4. The respondents all say the applicant is 100 percent at fault for the accident.
5. The applicant and Ms. Pook are self-represented. ICBC, TransLink, Coast Mountain, and Mr. Lum are all represented by Lynn Boutroy, an employee of ICBC.

## **JURISDICTION AND PROCEDURE**

6. 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.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "he said, they said" scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanor in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. In the circumstances here, I find that I am properly able to assess and weigh the

documentary evidence and submissions before me. 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 recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.

8. 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.
9. Under tribunal rule 9.3 (2), in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

10. The issue in this dispute is whether the applicant is liable for the accident, and if not, whether the applicant is entitled to \$2,500 in compensation.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
12. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
13. On June 1, 2018 at approximately 5:10 p.m. the applicant was driving his car eastbound on West Cordova Street in Vancouver.

14. ICBC says the bus in question was travelling eastbound on West Cordova in the curb lane approaching the intersection with Richards Street, and it stopped at the bus stop before this intersection for passengers to board and exit. ICBC says the distance from the bus stop to the intersection is approximately 1/3 of a block. ICBC says the bus started slowly accelerating forward in the curb lane, at which point the applicant was also travelling eastbound on West Cordova in the middle lane next to the moving bus. ICBC says that as the bus approached the intersection, the applicant's car suddenly changed into the curb lane in front of the bus and slowed to turn right onto Richards Street. ICBC says this caused the bus to stop suddenly, and the applicant turned right onto Richards Street and continued driving away from the scene. ICBC says the bus driver called out to passengers to hold on before he braked. Despite this warning, Ms. Pook claimed she was injured from the bus suddenly stopping.
15. In contrast, the applicant says that as he was turning right at the corner of Richards and West Cordova, the bus behind him in the curb lane stopped suddenly.
16. ICBC submitted TransLink's video footage of the incident, which has been edited for privacy purposes, several still photographs from the video footage, notes its adjuster made when viewing the video footage on July 9, 2018, as well as a recording of a phone call between Ms. Pook and TransLink in which Ms. Pook recollected the incident. I find that all of ICBC's evidence is consistent with its description of the incident. I note the video shows that the applicant did not move into the curb lane until his front tires were at the crosswalk for Richards Street.
17. ICBC determined the applicant was 100 percent at fault for the accident, and for Ms. Pook's injuries. I agree.
18. On November 7, 2018 the applicant viewed TransLink's video footage of the incident with an ICBC estimator. The applicant says the video footage is misleading because the scope of the camera is narrow and there was no rear or side-view video cameras on the bus, so it only shows his car once it was far ahead of the bus. However, I find his car being ahead of the bus is consistent with all parties'

recollection of how the accident occurred, and therefore I find the video footage in evidence is not misleading.

19. The applicant applied for a Claims Assessment Review from ICBC. The arbiter determined that the applicant was 100 percent liable for the incident based on file notes of video footage provided by TransLink as well as the applicant's admission that he did not realize the bus had started moving forward from the bus stop when he moved into its lane to turn right. The arbiter determined that the applicant did not ascertain that he could change lanes without interfering with other traffic in violation of section 151 of the *Motor Vehicle Act*. That section requires a driver approaching an intersection intending to turn right to drive their car in the lane nearest the right-hand side of the road. I agree with the arbiter's conclusions.
20. The applicant says Mr. Lum, Coast Mountain and TransLink breached their duty of care to Ms. Pook. He relies on the Supreme Court decision of *Tchir v. South Coast British Columbia Transportation Authority*, 2014 BCSC 1119, in which the court said Coast Mountain and TransLink owe their passengers a high standard of care. The court said that once it is established that a passenger was injured while riding on a public transit vehicle, a *prima facie* case of negligence is made out, and the onus shifts to Coast Mountain and TransLink to establish that the passenger's injuries occurred without their fault. In that case the court found the bus driver was negligent in similar circumstances, except that the car cutting in front of the bus in that case started drifting into the curb lane with enough warning for the bus driver to start gradually slowing down, and the car did not turn right in front of the bus. In this case the applicant did not enter the curb lane until it was already at the intersection, thus giving the bus driver very little time to brake.
21. The applicant submitted a statement from Ms. Pook in which she said she had just got onto the bus and "was reaching for pass to tap in. Car cut bus off and he had to slam on brakes to avoid collision" (quote reproduced as written). The applicant says it is clear from this statement that Ms. Pook was in an unstable position when the bus started moving forward from the bus stop. He says Mr. Lum, the bus driver,

should have waited for Ms. Pook to tap her pass, or he should have told her to hold onto a bar or lean against something before he started moving the bus forward. However, bus drivers are not generally required to wait for passengers to be seated before proceeding unless they are obviously impaired in some way, carrying a child, or otherwise unable to hold on (see *Patoma v. Clarke*, 2009 BCSC 1069). ICBC's notes indicate Ms. Pook was able-bodied at the time of the accident, and the applicant does not dispute this. Although Ms. Pook was reaching for her pass at the time of the accident the evidence does not indicate that she was unable to hold on. It is undisputed that Mr. Lum yelled out a warning to the passengers right before he braked suddenly. On balance I find the evidence establishes that Ms. Pook's injuries occurred without the fault of Mr. Lum, Coast Mountain or TransLink.

22. The applicant also says Ms. Pook was contributorily negligent because she did not have her fare ready when boarding the bus, and she was not holding onto anything when the bus started moving. However, there is no requirement for a bus passenger to have their fare ready before entering a bus, and Ms. Pook had no control over when the bus started moving. On balance, I find that Ms. Pook was not contributorily negligent for her injuries.
23. The applicant says there is not enough room to change from the middle lane to the curb lane to turn right onto Richards Street when there is a bus in the curb lane, because the bus stop signage is too close to the intersection and buses often overshoot the bus stop. He says it is not possible to merge into the curb lane behind a bus and wait for the bus to leave the bus stop, as sometimes buses wait at that bus stop for longer than usual and do not leave immediately after passengers have boarded. However, I find none of these are compelling reasons to justify the applicant's actions. While it may not be convenient to wait behind a bus before making a right turn, inconvenience does not override a driver's responsibilities under the *Motor Vehicle Act*.
24. The applicant also says he observed other vehicles turning right onto Richards Street from the middle lane of West Cordova Street. He says he has multiple videos

from multiple occasions, however he did not submit those videos into evidence. He submitted several screen shots of what appear to be other vehicles turning right onto Richards Street from the middle lane of West Cordova Street. However, I find these photographs do not assist me in determining liability for the accident at issue in this dispute.

25. On the evidence before me, I find the applicant is 100 percent liable for the accident, and therefore I find there is no basis on which re-assess ICBC's liability decision. The applicant seeks \$2,500 in compensation although it is unclear what this compensation is for or from which of the respondents he seeks payment. However, since I have found the applicant is 100 percent liable for the accident, I find he is not entitled to compensation, and I dismiss this claim.
26. ICBC says it is not the proper respondent to this dispute, and that the proper respondents are TransLink, Coast Mountain and Steven Lum, all of whom ICBC insures for third party motor vehicle accident claims. ICBC says Ms. Pook was a passenger on the bus and has no status in this dispute. They say this is a liability dispute between TransLink and the applicant. However, since I have dismissed the applicant's claims I find it is unnecessary for me to determine which party the applicant's claims may have been against had he been successful.
27. Under section 49 of the Act, and tribunal rules, since the applicant was unsuccessful I find he is not entitled to reimbursement of his tribunal fees. He has not claimed any dispute-related expenses.

## **ORDER**

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

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Sarah Orr, Tribunal Member

