



Civil Resolution Tribunal

Date Issued: February 26, 2021

File: SC-2020-007048

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Villeneuve v. Lucarino*, 2021 BCCRT 233

B E T W E E N :

MARCEL VILLENEUVE

APPLICANT

A N D :

MARCO ROBERT LUCARINO

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on September 26, 2018 in Surrey, British Columbia.

2. The applicant, Marcel Villeneuve, says the respondent, Marco Robert Lucarino, rode his motorized skateboard into the rear passenger side of Mr. Villeneuve's vehicle, causing damage. Mr. Villeneuve says Mr. Lucarino is 75% responsible for the accident. Mr. Villeneuve claims \$1,826, which is 75% of his vehicle repairs, deductible, and rental car costs.
3. Mr. Lucarino says Mr. Villeneuve is solely responsible for the accident and he should not have to pay anything.
4. Mr. Villeneuve is represented by an employee of his insurance company, Economical Insurance (Economical). Mr. Lucarino is self-represented.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me, and I find that there are no significant issues of credibility or other reasons that might require an oral hearing. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

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. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
9. I note that Mr. Villeneuve submitted evidence late. I find that Mr. Lucarino was not prejudiced by the late evidence because he had an opportunity to respond to it. So, I have allowed Mr. Villeneuve's late evidence and have considered it in my decision.

ISSUE

10. The issue in this dispute is who is responsible for the September 26, 2018 accident, and if Mr. Lucarino is responsible, what are the appropriate damages?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, as the applicant Mr. Villeneuve must prove his claims on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
12. As noted above, Mr. Villeneuve is represented by his insurer, Economical. I infer that Mr. Villeneuve carries basic auto insurance through the insurer, Insurance Corporation of British Columbia (ICBC), which every motorist in British Columbia must carry by law, and the remainder of his auto insurance is through Economical.
13. Mr. Villeneuve's evidence shows that Economical paid to repair Mr. Villeneuve's vehicle and for a rental car while his vehicle was being repaired. I infer that Economical has brought this claim in Mr. Villeneuve's name, based upon its subrogation rights, to recover what it paid from Mr. Lucarino.

14. In claiming Mr. Lucarino is 75% at fault for the accident, Mr. Villeneuve relies on the internal liability determination he says ICBC made after the accident. Mr. Villeneuve says that Mr. Lucarino did not dispute ICBC's liability assessment until after Economical asked him to pay for Mr. Villeneuve's vehicle repairs. Mr. Lucarino says he had no reason to dispute ICBC's liability assessment at the time it was made because ICBC fully covered his skateboard damage and he did not know Mr. Villeneuve was claiming any vehicle damage.
15. I find that Mr. Lucarino did not have to dispute ICBC's liability assessment to now claim he is not at fault in the context of this CRT dispute. I do not know what information ICBC had in making its liability determination, nor do I have ICBC's reasons for deciding Mr. Lucarino was 75% at fault. In any event, I am not bound by ICBC's liability determination. So, I must consider the evidence that is before me in this dispute and make my own liability assessment.

Who is responsible for the accident?

16. I find the following facts, which are undisputed:
 - a. On September 26, 2018, Mr. Villeneuve was driving eastbound on Fraser Highway near the intersection of 160th Street.
 - b. Mr. Lucarino was travelling on a motorized skateboard. He had exited a shopping centre and was also headed eastbound on Fraser Highway, in the bicycle lane.
 - c. Mr. Villeneuve made a right turn, intending to turn into an A&W restaurant. Mr. Lucarino collided with the rear passenger side door of Mr. Villeneuve's vehicle as Mr. Villeneuve made his turn.
17. Mr. Villeneuve's central position is that he says it was "clear" for him to turn right. In contrast, Mr. Lucarino says he had been travelling in the bicycle lane for some time. He says he was there to be seen, and Mr. Villeneuve was obligated to yield to him, which he failed to do and caused the accident.

18. I note that Mr. Lucarino argues he should be considered a pedestrian for the purpose of determining the parties' obligations under the *Motor Vehicle Act* (MVA). In support of his position, Mr. Lucarino points to City of Surrey By-law No. 13007, which defines "pedestrian" as a person "afoot" and includes a "skater". A "skater" is then defined as a person who is skateboarding. I acknowledge that the MVA allows municipal bylaws to govern the use of skateboards on its roads. However, I find Surrey's by-laws do not apply to this dispute because the MVA and the law of negligence apply.
19. In particular, the MVA has its own definition of "pedestrian", which does not include a person on a skateboard. I find Mr. Lucarino is not considered a pedestrian under the MVA. Further, Division 24 of the *Motor Vehicle Act Regulations* (MVAR), defines "miniature motor vehicle" as a motorized go-cart, skateboard, or similar wheeled toy vehicle. I find Mr. Lucarino was operating a miniature motor vehicle, as defined under Division 24 of the MVAR, at the time of the accident.
20. Regulation 24.02 of the MVAR says a person must not use or operate a miniature motor vehicle on a highway, except on parade routes so designated by local or provincial government authorities. I find Fraser Highway is a "highway" under the MVA and MVAR, and it was not a parade route at the relevant time. Therefore, I find Mr. Lucarino was operating his skateboard in contravention of regulation 24.02 of the MVAR at the time of the accident.
21. However, a breach of the MVAR does not necessarily amount to a finding of negligence: see *Ilett v. Buckley*, 2017 BCCA 257. While the MVA and MVAR provide guidelines for assessing fault in motor vehicle cases, in the end, the court (or tribunal) must determine whether each party met their common law duties of care to other users of the road, which requires consideration of the reasonableness of the parties' actions: *Salaam v. Abramovic*, 2010 BCCA 212.
22. Noting that Mr. Villeneuve bears the burden of proving that Mr. Lucarino was negligent, for the following reasons I find Mr. Villeneuve has failed to meet his burden.

23. As noted, the parties agree that Mr. Lucarino turned right on his skateboard from a shopping centre into the bicycle lane on eastbound Fraser Highway. Mr. Lucarino provided several photographs and Google maps of the area where the accident occurred, showing the distance between the shopping centre where he entered Fraser Highway, and the A&W parking lot where Mr. Villeneuve turned right. Mr. Lucarino says he measured the distance between the shopping centre exit and the accident location to be 252 feet. Mr. Villeneuve did not dispute Mr. Lucarino's measurement and it appears consistent with the photographs in evidence. Mr. Lucarino also says it took him 13 seconds to drive that stretch of Fraser Highway himself, which Mr. Villeneuve also did not dispute. From the photographs, I find that this portion of Fraser Highway is straight and level. Mr. Lucarino was undisputedly wearing a bright white helmet at the time.
24. Based on Mr. Villeneuve's evidence and submissions, I find that he observed Mr. Lucarino make his right turn from the shopping centre onto Fraser Highway. I find Mr. Lucarino then travelled behind Mr. Villeneuve for 252 feet in the bicycle lane before Mr. Villeneuve turned right into the A&W parking lot. Given that Mr. Villeneuve saw Mr. Lucarino exit the shopping centre driveway, I find he knew or ought to have known that Mr. Lucarino was somewhere behind him on Fraser Highway before he started his right turn into the A&W parking lot.
25. I find the governing MVA provision in this case is section 144, which says a person must not drive without due care and attention, or without reasonable consideration for other persons using the highway.
26. Mr. Villeneuve has not said whether he activated his right turn signal and, if he did, how long it was activated before his turn. He has not specifically said whether he looked in his rearview or side mirrors or whether he shoulder-checked before starting his turn. He has not said there was any reason his view was obstructed or that he should not have seen Mr. Lucarino. He said only that "it was clear to enter A&W", though I find it plainly was not.

27. I find that section 144 of the MVA required Mr. Villeneuve to take appropriate steps to ensure he knew where Mr. Lucarino was before making his turn, but he failed to do so. Whether Mr. Lucarino was on a motorized skateboard, a bicycle, or any other device, I find he was there to be seen and Mr. Villeneuve was obligated to drive with reasonable consideration for him, including not making a right turn into Mr. Lucarino's path of travel. I find Mr. Villeneuve drove without the care and attention section 144 of the MVA required, and his negligence caused the accident.
28. As for Mr. Lucarino's actions, Mr. Villeneuve has not made any allegations that he was operating his motorized skateboard negligently or how he in any way caused the accident. Again, I find that Mr. Lucarino simply being on a motorized skateboard while on a highway is insufficient to prove he was negligent. I find Mr. Villeneuve has not proven that Mr. Lucarino bears any responsibility for the September 26, 2018 accident. Therefore, I find Mr. Villeneuve is 100% at fault. I dismiss Mr. Villeneuve's claim.
29. 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. I see no reason in this case not to follow that general rule. Mr. Villeneuve was unsuccessful and so I dismiss his claim for CRT fees. Mr. Lucarino did not pay any CRT fees or claim any dispute-related expenses, so I make no order.

ORDER

30. I dismiss Mr. Villeneuve's claims and this dispute.

Kristin Gardner, Tribunal Member