



Civil Resolution Tribunal

Date Issued: August 4, 2021

File: SC-2021-002103

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Meausette v. ICBC*, 2021 BCCRT 851

BETWEEN:

CECILY MEAUSETTE and CORY MEAUSETTE

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA and

JASON SCOTT NEIL

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on January 24, 2021, in Victoria, B.C.

2. The applicant Cecily Meausette was driving a red sports utility vehicle owned by the applicant Cory Meausette. Ms. Meausette was turning left when her vehicle was struck on the driver's side by a blue car owned and driven by the respondent Jason Scott Neil. The respondent insurer, Insurance Corporation of British Columbia (ICBC), internally determined Ms. Meausette 100% at fault for the accident.
3. Ms. Meausette denies responsibility for the accident. She relies on a witness statement from a third party (R), who says Mr. Neil is at fault for the accident because Mr. Neil turned right at a red light without stopping and ran into Ms. Meausette's car. Mr. Neil says he turned right at a green light. He says Ms. Meausette is at fault because she turned left out of a side street directly in front of his car.
4. The applicants claim \$300 for their insurance deductible plus any difference in their yearly car insurance premiums, without quantifying that amount.
5. ICBC says Ms. Meausette has no standing to make a claim for the vehicle damage costs, including the deductible, as she is not the vehicle owner. ICBC also says Ms. Meausette's insurance premium discount would not be improved unless she was found 25% or less at fault for the accident.
6. An ICBC employee represents the respondents. Ms. Meausette represents the applicants.

JURISDICTION AND PROCEDURE

7. 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.

8. 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. 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.
9. 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.
10. 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.

ISSUES

11. The issues in this dispute are:
 - a. Is Mr. Neil fully or partially responsible for the accident?
 - b. If so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this one the applicants must prove their claim on a balance of probabilities. I have reviewed the submissions and weighed the evidence provided but only refer to that necessary to explain and give context to my decision.

Background Facts

13. The accident occurred at the Victoria intersection of Garbally Road, which runs east-west, and Bridge Street, which runs north-south. Bridge Street ends just north of

Garbally Road, at Gorge Road East, which runs diagonally north-west and south-east. None of this is disputed.

14. Ms. Meausette was travelling east on Garbally Road, turning left onto Bridge Street northbound. There was a stop sign on Garbally Road. Bridge Street traffic had no traffic controls at Garbally Road. Mr. Neil had travelled south-east on Gorge Road East and turned right onto Bridge Street southbound just prior to the accident. The Gorge Road East and Bridge Street intersection is controlled by traffic lights. None of this is disputed.
15. Ms. Meausette provided a telephone statement to an ICBC adjuster on January 26, 2021. She said she stopped at the stop sign on Garbally Road, looked both left and right and saw no vehicles approaching so started turning left onto Bridge Street. Ms. Meausette said she saw flashing headlights to her left and felt the impact of Mr. Neil's vehicle. She said Mr. Neil's car "came out of nowhere" and that she did not see it before she started turning left.
16. Mr. Neil provided a telephone statement to an ICBC adjuster on February 1, 2021. He said that he turned right onto Bridge Street from Gorge Road East on a green light. He said he checked oncoming traffic turning left onto Bridge Street from Gorge Road East and looked for pedestrians and cyclists crossing the road, before turning right onto Bridge Street. Mr. Neil said the accident occurred only a few seconds after he turned right and that he had travelled about 50 to 60 feet south on Bridge Street. Mr. Neil said Ms. Meausette "all of a sudden" pulled out in front of him on Bridge Street.
17. In his statement Mr. Neil said he measured the distance on Bridge Street between Garbally Road and Gorge Road East to be approximately 70 to 80 feet. Relying on Google Maps, the respondents say the distance is approximately 93 feet. As the applicants do not dispute the distance, I accept that the Garbally Road intersection is approximately 80 to 93 feet south of the Gorge Road East intersection with Bridge Street.

18. R provided a telephone statement to an ICBC adjuster on January 26, 2021. R was driving north-west on Gorge Road East and was waiting at the intersection to turn left onto Bridge Street southbound. R said he was the first car in the left turn lane and saw the advanced left turn light turn green. He said he saw the blue car driving in the opposite direction approach the intersection and turn right onto Bridge Street without stopping first, while looking at R. I infer the driver of the blue car was Mr. Neil.

Who is responsible for the accident?

19. In his statement R said that Mr. Neil's light must have been red when he reached the intersection, because R's advanced turn light had already turned green. I agree with R's reasoning and find it unlikely that Mr. Neil would have been facing a green through light at the same time R had a green left turn light. I give R's statement significant weight as he was not involved in the accident and did not know the parties and so is a neutral witness. I also find that R likely had a clear view of the events leading up to the accident, from his position in the intersection. I find it likely Mr. Neil turned right onto Bridge Street on a red light without stopping before turning, as required by section 129 of the *Motor Vehicle Act* (MVA). However, I do not find this determines Mr. Neil's fault for the accident, because the accident did not happen at Gorge Road East and Bridge Street, but rather at Garbally Road and Bridge Street.

20. I agree with ICBC that Bridge Street is a through highway under the MVA. Under MVA section 175(1), Ms. Meausette had a duty to yield the right of way to traffic on Bridge Street and enter the street only if the intersection was clear of immediate hazards. An immediate hazard is one which requires the driver to take some "sudden or violent action" to avoid a collision (see *Keen v. Stene*, 1964 CanLII 521 (BC CA), as cited in *Currie v. Taylor*, 2012 BCSC 1553 at paragraph 65, affirmed 2014 BCCA 51). As the servient driver, Ms. Meausette was required to avoid the threat of collision, and not just the collision itself (see *Knight v. Li*, 2011 BCSC 184, cited in *Currie* at paragraph 67).

21. Under MVA section 175(2) Mr. Neil had a duty to yield the right of way to Ms. Meausette if she complied with MVA section 175(1) and was lawfully in the

intersection when he approached on Bridge Street. Mr. Neil also had a duty to take any steps to avoid an accident if he was aware, or should have been aware, of Ms. Meausette's entering the intersection. Any doubt as to whether the dominant driver could have avoided the hazard created by the servient driver should be resolved in favour of the dominant driver which, in this case, is Mr. Neil (see *MacDonald v. Becker*, 2021 BCSC 1464 at paragraph 34).

22. Based on their statements, I find neither party saw the other's vehicle until immediately before the accident occurred. In his statement R says he saw Ms. Meausette leave the stop sign on Garbally Road before Mr. Neil turned right onto Bridge Street.
23. ICBC says the vehicle damage is inconsistent with R's observations. Based on the parties' statements, and the vehicle damage, I find the front of Mr. Neil's vehicle struck the middle driver's side of the applicants' vehicle. This indicates that Ms. Meausette had left the stop sign and was in the intersection, but not yet turned left, when Mr. Neil's vehicle struck Ms. Meausette's. I do not find that determinative of whether Ms. Meausette left the stop sign before, or after, Mr. Neil turned right onto Bridge Street. This is because there is no evidence of either vehicle's speed prior to the accident, or any opinion evidence about whether what R saw was plausible, given the distances involved. In the absence of that contrary evidence, I find R's observations are plausible and accept that he saw Ms. Meausette leave the stop sign before Mr. Neil turned right onto Bridge Street.
24. As Mr. Neil had not yet turned onto Bridge Street when Ms. Meausette entered the Garbally Road intersection, I find he did not pose an immediate hazard to Ms. Meausette. So, I find Mr. Neil failed to yield to Ms. Meausette, who was lawfully in the intersection, contrary to section 175(2) of the MVA.
25. However, I also find that Ms. Meausette bears some responsibility for the accident. I find she failed to keep a proper lookout, as required under section 144 of the MVA. This is because she undisputedly did not see Mr. Neil driving toward her from approximately 80 feet away while she was crossing Bridge Street. I also find Mr. Neil

contravened section 144 of the MVA by failing to see Ms. Meausette in the intersection while driving toward her.

26. I find both drivers bear some responsibility for the accident. I find Ms. Meausette 25% at fault and Mr. Neil 75% at fault for the accident.

Remedy

27. Although I find Ms. Meausette only partly responsible for the accident, I find the applicants have not proven their claimed damages.
28. First, the applicants did not submit any evidence showing that either one paid a \$300 insurance deductible in order to repair Mr. Meausette's vehicle. Regardless of whether Ms. Meausette has standing to make a claim for the insurance deductible, I find the applicants have not proven the deductible was paid. So, I dismiss the applicants' \$300 claim for the insurance deductible.
29. Second, the applicants say they "now have increased insurance costs" but do not explain whether that increased cost has already occurred or is anticipated in the future. Nor have the applicants provided any evidence of that increased cost to either Mr. or Ms. Meausette. ICBC says that, if Ms. Meausette is found to be 25% or less responsible for the accident, ICBC will change her driver risk factor rating, which I infer will mean Ms. Meausette's insurance premiums will not increase in the future as a result of this accident. As the applicants do not dispute this, I accept ICBC's statement. I find Ms. Meausette has not sustained any future loss in the way of increased insurance premiums and that the applicants have not proven they have, or will, suffer any loss. I dismiss the applicants' claim for increased insurance premiums.
30. 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. Despite my findings on accident fault, the applicants were ultimately unsuccessful because I dismissed their claims for failure to prove damages. So, I find they are not entitled to reimbursement of any CRT fees or dispute related

expenses, under section 49 of the CRTA and the CRT rules. The successful respondents claim no dispute-related expenses.

ORDER

31. I dismiss the applicants' claims, and this dispute, because damages are unproven.

Sherelle Goodwin, Tribunal Member