



Civil Resolution Tribunal

Date Issued: January 20, 2022

File: SC-2021-003354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *EP (Litigation Guardian of) v. ICBC*, 2022 BCCRT 78

BETWEEN:

BJP as Litigation Guardian of EP, minor

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA, REBEKAH
HADASSAH TRALNBERG, and ERIN SUSAN TRALNBERG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This small claims dispute is about a motor vehicle accident that occurred on October 26, 2020 in Kelowna, BC.

2. The minor applicant, EP, was westbound on Casorso Road and turned left on a yellow light onto Gordon Drive while the respondent, Rebekah Hadassah Trainberg, was travelling eastbound on Casorso Road. Their two vehicles collided in the intersection.
3. The respondent Erin Susan Trainberg owns the vehicle Rebekah was driving. Because these two individual respondents share the same last name, I will refer to them by their first names in this decision, intending no disrespect.
4. The respondent, Insurance Corporation of British Columbia (ICBC), insures the parties. ICBC internally determined that the accident was entirely EP's fault. ICBC's determination is not binding on me.
5. EP disagrees with ICBC's liability determination. He says Rebekah caused the accident by failing to stop for the yellow light. EP claims \$4,700 in future increased insurance premiums and \$300 for reimbursement of his paid deductible.
6. The respondents say that EP caused the accident by turning left when it was unsafe to do so. The respondents ask that I dismiss EP's claims.
7. EP is represented by his mother and litigation guardian, BJP. The respondents are all represented by an ICBC employee.

JURISDICTION AND PROCEDURE

8. 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.
9. 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.

10. 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.
11. 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.

Late evidence

12. EP submitted several items of evidence past the deadline. The late evidence included information about EP's insurance premiums, a copy of the police report from the accident, and an 18-page "communication timeline" document that I infer EP created, along with documents supporting the timeline, which included copies of email correspondence with ICBC, copies of the parties' statements to ICBC, including EP's 11-page written statement, and a later document EP prepared explaining calculations in his written statement. The respondents were advised of the late evidence and provided an opportunity to respond.
13. I find all the late evidence is relevant to this dispute. However, most of the documents filed in support of the timeline document are duplicates of documents already in evidence. So, I decline to admit the email correspondence and the parties' previous statements. I also decline to admit EP's document explaining calculations in his written statement about the accident because he has repeated this information in his submissions.
14. Noting that the respondents do not object to the other late evidence and bearing in mind the CRT's mandate for flexibility, I admit the evidence about EP's insurance

premiums, the police report, and EP's communication timeline. I discuss the relevant weight of this evidence where necessary, below.

ISSUES

15. The issues in this dispute are:
 - a. Who was responsible for the accident?
 - b. Did ICBC reasonably investigate the accident?
 - c. What are EP's damages, if any?

BACKGROUND

16. In a civil claim such as this, EP as the applicant must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the parties' evidence and submissions, but I refer only to what I find is necessary to explain my decision.
17. The following facts are undisputed. As noted, the accident occurred in the intersection of Casorso Road and Gordon Drive in Kelowna, BC. EP was travelling westbound on Casorso Road, which has one dedicated left-turn lane, one straight-through lane, a bike lane, and a right turn lane when approaching Gordon Drive. The lane configuration is the same for eastbound traffic on Casorso Road. Gordon Drive has one dedicated left-turn lane and 2 straight-through lanes for both northbound and southbound traffic.
18. The accident occurred on October 26, 2020 at about 6:55 pm. It was dusk, and the roads were bare and dry. EP entered the dedicated left-turn lane, with his left turn signal on, and was waiting for traffic to clear before making a left turn onto Gordon Drive. Rebekah was driving eastbound on Casorso Road. They both saw the traffic light turn yellow. EP started his turn, and Rebekah continued through the intersection where their vehicles collided. The dispute is essentially over which driver should have yielded to the other.

19. According to the vehicle damage photos, EP's vehicle was damaged on the passenger side rear door and the front of the rear wheel well. Rebekah's vehicle damage was primarily on the front of the vehicle on the passenger side, under the headlight.

EVIDENCE AND ANALYSIS

Who was responsible for the accident?

20. In addition to the evidence from EP and Rebekah, there was an independent witness to the accident, RM, who was travelling behind EP.
21. I start with Rebekah's evidence. She initially reported to ICBC on the accident date that as she entered the intersection, the light changed to yellow. She stated she saw a vehicle in the opposing lane with its left turn signal on, and as she was halfway through the intersection, the other car turned left in front of her. Rebekah stated she tried to brake and swerve but collided with the side of the other vehicle.
22. ICBC's file notes show that in a subsequent telephone call on October 28, 2020, Rebekah stated she had a green light and it turned yellow just as she was over the marked crosswalk, which is when the other driver made his left turn in front of her.
23. Turning to EP's evidence, he reported to ICBC on October 27, 2020 that he was fully stopped, slightly in the intersection preparing to turn left. He stated that he saw Rebekah's car on Casorso Road, about 2 car lengths before the intersection, when the light turned yellow. EP stated he turned left, and Rebekah hit his rear passenger side car door.
24. EP subsequently prepared an 11-page written statement, which he provided to ICBC on November 9, 2020. In the written statement, EP stated while he was in the left turn lane, he came to a stop at the white stop line, where he saw Rebekah's vehicle about 6 to 8 car lengths down Casorso Road. He stated he then moved slightly into the intersection and again came to a full stop. When Rebekah was about 2 car lengths from the intersection, EP stated the light turned yellow. He stated he "assessed that

it was safe to turn left” because all cars were stopped except for her car. So, he says he started his turn, and by the time he realized she did not stop, there was no time to honk or even brace for the impact.

25. The police attended the accident scene and spoke with EP and Rebekah. The police report in evidence indicates Rebekah stated she entered the intersection on a green light that subsequently turned yellow, and EP stated the light was yellow “significantly before” she reached the intersection.
26. ICBC spoke with RM over the phone. RM stated that Rebekah was coming across the intersection on a yellow light and EP “just went” and turned left in front of her. BJP also contacted RM and requested she provide further details about her recollection by email, which she did. In RM’s January 19, 2021 email, she maintained that Rebekah was already coming through the intersection when the light turned yellow, and that EP started his left turn even though the intersection was not clear.
27. I find that section 128(1)(a) and section 174 of the *Motor Vehicle Act* (MVA) are relevant to this dispute. Section 128(1)(a) says that a motorist approaching a yellow light must stop unless it would be unsafe to do so. Section 174 says that a motorist turning left must yield to oncoming traffic that is either in the intersection or so close to the intersection that it is an immediate hazard.
28. Liability for left-turn accidents like this one depends in large part on the colour of the traffic light when the straight-through driver enters the intersection because this determines who had the right of way. Generally, the straight-through driver has the right of way, unless they enter the intersection after the light has turned red (see *Lozinski v. Maple Ridge (District)*, 2015 BCSC 1277, at paragraph 70).
29. EP referenced 3 court decisions involving left-turn accidents in his submissions, where the straight-through drivers were each found fully responsible for the accident. However, I find these cases do not apply to the facts here because the judge in each of those cases found the straight-through driver had entered the intersection on either a very late (stale) yellow or a red light.

30. Here, there is no suggestion in any of the evidence that Rebekah entered the intersection after the light had already turned red. While EP argues that Rebekah's statements about where she was when the light turned yellow are inconsistent, I find even on EP's own evidence, Rebekah was only 2 car lengths from the intersection when the light turned yellow. So, at most I find Rebekah entered the intersection on an 'early yellow' light, if not a green light.
31. Further, contrary to EP's submissions, the presence of a vehicle waiting to turn left does not create a duty on the straight-through driver to take extra care, and the straight-through driver is entitled to presume the left turner will not start a turn until the straight-through driver has cleared the intersection (see *Krist v. Bock*, 2018 BCSC 433). So, while Rebekah saw EP waiting to turn left, I find that does not mean she was obligated to slow down as she approached the intersection. Rather, the question is whether she could safely stop when the light turned yellow.
32. EP made extensive submissions and provided documents he created with mathematical calculations of speed, distance travelled, and time to the point of impact based on his and Rebekah's statements, to show that Rebekah had time to brake and avoid the accident. While I acknowledge the effort EP put into reconstructing the accident, I find that accident reconstruction and the relevant factors to determine vehicle speeds and relative position, particularly based on vehicle damage, are not matters within ordinary knowledge and expert evidence is required (see *Bergen v. Guliker*, 2015 BCCA 283). There is no evidence before me that EP is an expert in engineering or accident reconstruction, and, in any event, he is not a neutral witness because he is a party to this dispute. So, I find there is no expert evidence before me, and I place no weight on EP's calculations.
33. Overall, I find RM's evidence persuasive, as she was an independent witness with a clear view of the accident. Based on RM's statements, I find the light likely turned yellow just before Rebekah entered the intersection, and that Rebekah could not have stopped safely before entering the intersection. Therefore, I find Rebekah had the right of way as she entered the intersection.

34. While EP says he assessed it was safe for him to turn, he did not say how he came to that decision. He says nothing about his assessment of Rebekah's speed, that she appeared to be slowing down, or even that he thought she had enough time to stop before entering the intersection. Having seen Rebekah approaching the intersection, I find EP was obligated to wait and determine whether Rebekah would stop so he could safely complete his left turn. I find he did not do so.
35. On balance, I find EP proceeded to turn left when Rebekah's vehicle was in the intersection or so close as to constitute an immediate hazard. In doing so, I find EP breached section 174 of the MVA and his actions fell below the standard expected of a reasonably prudent driver.
36. I find EP was solely at fault for the accident. So, I dismiss his claims against Rebekah and Erin.

Did ICBC reasonably investigate the accident?

37. EP also takes issue with how ICBC investigated the accident. It is well-established that ICBC must act properly and reasonably in assigning fault (*Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322). As part of this obligation, ICBC must reasonably investigate a claim. In doing so, ICBC is not expected to investigate with the "skill and forensic proficiency of a detective". Rather ICBC must bring "reasonable diligence, fairness, an appropriate level of skill, diligence and objectivity" (*McDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283).
38. EP argues that ICBC acted unreasonably by making its liability determination before speaking to him and without considering his 11-page statement about the accident circumstances.
39. ICBC's file notes show that both the initial adjuster and an ICBC manager ultimately reviewed EP's written statement, but that it did not change their view that EP was fully liable for the accident. EP and BJP continued to dispute the liability determination and request further information. However, the evidence shows ICBC relied on the clear

evidence that both EP and Rebekah faced a yellow light and determined that EP made an unsafe left turn when Rebekah's vehicle posed an immediate hazard.

40. I find the evidence shows ICBC considered EP's statements and arguments but simply did not agree with them. Overall, I find there was nothing unreasonable or unfair about ICBC's investigation or its liability decision. I dismiss EP's claims against ICBC.
41. Having reached these conclusions, I find it unnecessary to address EP's claimed damages.
42. 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. EP was unsuccessful and so I dismiss his claim for CRT fees. The respondents did not pay any fees or claim any dispute-related expenses, so I make no order.

ORDER

43. I dismiss EP's claims and this dispute.

Kristin Gardner, Tribunal Member