

**IN THE MATTER OF AN ARBITRATION PURSUANT TO
Section 148.2(1) of the Revised Regulations to the Insurance (Vehicle) Act
(includes amendments up to the BC Reg. 126/2014) and**

AND

Arbitration Act, RSBC 2020, c. 2

BETWEEN:

RJ

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

LIABILITY AWARD

Counsel for the Claimant

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Arbitrator

Mark Tweedy, C. Med., C. Arb.

Dates of Hearing

October 10-12, 2023

Place of Hearing	Vancouver, BC
Date of Oral Submissions	October 12, 2023
Dates of Written Submissions	October 17, October 19, and October 21, 2023
Date of Award	October 30, 2023

A. Introduction

1. This is a claim for compensation for injuries sustained by the claimant, pursuant to underinsured motorist coverage (“UMP”) afforded by the *Insurance (Vehicle) Regulation*.
2. The motor vehicle accident which gives rise to this proceeding occurred on November 26, 2018. The claimant, RJ was the driver of a vehicle that was travelling eastbound on 96th Avenue, near 120 Street-Scott Road-in Surrey, BC. Mr. FT was the driver of a vehicle that was travelling westbound on 96th Avenue. The accident occurred when Mr. FT turned left, and struck the claimant’s vehicle.
3. A tort proceeding was commenced by the claimant. It was settled for the available insurance limits. This matter now proceeds with the consent of ICBC.
4. Liability for the accident is in dispute. This hearing dealt solely with that issue. The claimant says that liability should be borne solely by the respondent. The respondent says that liability should be borne solely by the claimant, or alternatively, apportioned between the parties.

B. Evidence of Ms. RJ

5. Ms. RJ was 38 years old at the time of the accident. She was travelling from her home to her sister’s home when the accident occurred. She was very familiar with the intersection, having passed through it many times. She confirmed that she was travelling eastbound on 96th Avenue. Her evidence was that the light just turned yellow at the time she entered the intersection, or perhaps shortly before she entered the intersection.
6. As Ms. RJ was moving through the intersection, a car travelling toward her turned left without incident. Immediately following this, Mr. FT turned left as well, resulting in the collision. This happened quite suddenly, and although she applied the brakes, she was unable to stop. She said that she did not see Mr. FT’s vehicle prior to the accident.
7. Ms. RJ’s evidence was that it was raining quite heavily at the time of the accident. She does not recall if the rain made the road slippery. She said that because of the rain, she was travelling at less than the posted speed limit of 50 kilometers per hour.

C. Evidence of Mr. FT

8. Mr. FT was 17 years old at the time of the accident. He held a Novice or “N” driver’s license. His evidence was that he had learned to drive at young age, on private property, taught by his father.

9. Mr. FT agreed that the roads were a bit slippery at the time of the accident.

10. Mr. FT was following his father, Mr. DR, to a Craftsman Collision location at the time of the accident. His evidence was that he was following closely, as he did not know the way, and did not have a GPS device in his car. He does not remember turning into the intersection. He does not recall seeing Ms. RJ’s car, because he could not see through his father’s vehicle. He agreed that he did not slow before turning: “he just followed his father” through the intersection.

11. Mr. FT said that he was unaware of how long the light had been yellow when he commenced his left hand turn.

12. Mr. FT received a ticket for failing to yield on a left turn, in contravention of section 174 of the *Motor Vehicle Act*, RSBC 1996 c 13 (“the *Motor Vehicle Act*). His evidence was that although he “does dispute other tickets”, he did not dispute this one as there was “no real reason to fight it”.

D. Video evidence

13. Two video cameras recorded the collision. One was pointed east on 96th Avenue, and the other was point north on 120th Street. The video footage reveals, *inter alia*, the following:

(a) both drivers entered into the intersection after the light had turned yellow;

(b) Mr. FT entered the intersection one to two seconds after Ms. Johal. He did not stop or slow down before turning left, and simply followed his father’s turn;

(c) Mr. DR entered the intersection a fraction of a second after the light had turned yellow; and.

(d) almost at the moment of impact between Mr. FT’s vehicle and Ms. RJ’s vehicle, the light turned red. At that point, Ms. RJ had almost cleared the intersection, while Mr. FT had just entered it.

E. Expert evidence

(a) **Amrit Toor, PhD, P. Eng.**

14. Dr. Toor was accepted as a mechanical engineer with particular expertise in accident reconstruction. He authored a report dated September 23, 2022 at the request of the claimant's counsel.

15. Dr. Toor's opinion was that Ms. RJ travelling at 43 kilometers per hour at the moment of impact, while Mr. FT was travelling at 34 kilometers per hour.

16. Dr. Toor concluded, inter alia, that:

"The collision avoidance for both vehicle operators was twofold:

(a) Respond to the change in traffic signal and stop before the intersection,

(b) Respond to each other and implement appropriate collision avoidance maneuver.

In both cases there was likely greater potential for Mr. FT to avoid the collision than Ms. RJ."

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(b) Mr. Bradley Heinrichs, MSC, P. Eng.

17. Mr. Heinrichs was accepted as a mechanical engineer with particular expertise in accident reconstruction. He authored a report in response to Dr. Toor's report dated October 31, 2022 at the request of the respondent's counsel.

18. Mr. Heinrichs' opinion was that both the claimant's vehicle and the respondent's vehicle could have stopped and avoided the collision. He also opined that the respondent's vehicle could have stopped a little faster than the claimant's vehicle, and further that the respondent's vehicle would not have had to have braked as hard as the claimant's vehicle to come to a stop.

19. Mr. Heinrichs was not asked to address collision avoidance by either party.

F. Relevant provisions of the *Motor Vehicle Act*

20. The relevant provisions of the *Motor Vehicle Act* are as follows:

(a) Section 174

"When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard but having yielded and given a signal as required by sections 171 and 172, the driver may

turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.”

(b) Section 128 (1) (a)

“When a yellow light alone is exhibited at an intersection by a traffic control signal, following the exhibition of a green light,

(a)the driver of a vehicle approaching the intersection and facing the yellow light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, unless the stop cannot be made in safety.”

(c) Section 144

“A person must not drive a motor vehicle on a highway... without due care and attention...”

G. The claimant’s position

21. The claimant says that the respondent is 100% at fault for the collision. She relies on section 174 of the *Motor Vehicle Act*, and says because she was in the intersection before the respondent commenced his turn, she constituted an “immediate hazard” to him. Relying on the wording of the statute, and *Nerval v. Khehra*, 2012 BCCA 436, she says that burden is on the respondent to prove that it was safe for him to commence his turn when he did. If he is unable to do so, he should be 100% at fault, and that any doubt should be resolved in her favour. See *Pacheco (Guardian of) v. Robinson*, 75 BCLR (2d) 273 (BCCA).

H. The respondent’s position

22. The respondent says that the claimant should not have proceeded through the intersection at all, as she could have stopped safely when the light turned yellow. Further, the respondent says that because the light was a “stale yellow”, the claimant is entirely at fault. The respondent relies in particular on *Lee v. Tse*, 2013 BCSC 1740, *Kokinis v. Hall* [1996] BCJ No. 1560 (BCCA), and *Henry v. Bennet*, 2011 BCSC 1254.

23. Alternatively, the respondent says that because the light was a stale yellow, liability should be apportioned, although what that apportionment should be was not specifically argued.

I. Analysis

24. The parties are agreed that the common law duty of care applies to my liability analysis. This common law duty is largely codified in section 144 of the *Motor Vehicle Act*.

25. Regardless, as stated by Justice Dardi in *Stewart v. Dueck*, 2012 BCSC 1729 at paragraph 38:

“The authorities establish that all motorists have an overarching common law duty to exercise what constitutes, in all the circumstances, reasonable and due care. All motorists have a general duty to keep a proper look-out and to take reasonable precautions in response to apparent potential hazards.”

26. In my view, Mr. FT’s evidence establishes that he took inadequate, indeed he did not take any care, when turning left. Simply put, he followed his father through the intersection, aware that the light was yellow, but without any consideration as to for how long. It was entirely possible for him to safely stop at the intersection, and allow Ms. RJ to proceed through.

27. I have considered the cases counsel referred me to regarding stale yellow lights, and do not find them to be of assistance. *Lee v. Tse* involves a consideration of the defendant entering on a red light. In addition, it is clear that the left turning plaintiff observed the defendant’s vehicle, and made a considered decision to proceed. There is no such evidence in this case. Rather, even though he knew the light was yellow before commencing his turn, Mr. FT proceeded without considering at all whether it was safe to do so.

28. *Henry v. Bennet* was another late yellow light case. Ms. Bennet was the left turning driver. In finding Mr. Bennet solely at fault, the court said:

“Moreover, I find that in all the circumstances she [Ms. Bennet] conducted herself prudently and with reasonable care in negotiating her left turn.”

29. I am unable to say the same of Mr. FT. In my opinion, following his father through the intersection without knowing when the light turned yellow cannot be said to be prudent or reasonable.

30. I am aware that Ms. RJ entered the intersection after the light had turned yellow, which was in breach of section 128 (1) (a) of the *Motor Vehicle Act*. I am of the view that this did not displace the obligation imposed upon Mr. FT by section 174 to yield to Ms. Johal.

31. Finally, I note that Mr. FT did not contest the ticket issued to him for failing to yield on a left turn. While I do not think that this is dispositive of the issue of liability, I agree with the claimant’s submissions that it supports a finding of negligence. See *The Queen (Can.) v. Saskatchewan Wheat Pool*, CanLII 21 (SCC).

J. Conclusion

32. Based on the evidence before me, I find that the collision was caused solely by the negligence of Mr. FT.

33. I wish to thank counsel for their assistance throughout.

Mark Tweedy

Mark Tweedy, C. Med., C.Arb
Arbitrator