



Civil Resolution Tribunal

Date Issued: March 3, 2023

File: VI-2021-007657

Type: Motor Vehicle Injury

Category: Fault & Damages

Civil Resolution Tribunal

Indexed as: *Narayan v. ICBC*, 2023-BCCRT 175

BETWEEN:

ROBERT NARAYAN

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA, KBK
AUTOMOBILE SERVICES LTD., and ARVIN KUMAR

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about vehicle damage. The applicant, Robert Narayan, took his van to the respondent, KBK Automobile Services Ltd. (KBK), to have his brakes repaired. The respondent, Arvin Kumar, owns KBK and performed the repairs.

2. Mr. Narayan says KBK or Mr. Kumar damaged his van's driver's side front fender and door. Mr. Narayan seeks \$4,000, which he says is the cost to repair the van's damage.
3. The respondent insurer, Insurance Corporation of British Columbia (ICBC), insures Mr. Narayan's van. ICBC says KBK did not hold a "garage policy" when Mr. Narayan's van was damaged. ICBC says Mr. Narayan had the option to file an insurance claim under his first-party coverage, but declined to do so. So, ICBC says Mr. Narayan's claim is properly against KBK or Mr. Kumar, and says it is not a proper party.
4. KBK and Mr. Kumar deny damaging Mr. Narayan's van. They say the van was parked in KBK's lot, which is accessible by third parties. So, it says the van was likely damaged in a hit and run accident. They deny owing Mr. Narayan any money.
5. Mr. Narayan represents himself. Mr. Kumar represents himself and KBK. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over motor vehicle injury disputes, or "accident claims", brought under section 133 of the Civil Resolution Tribunal Act (CRTA). Section 133(1)(c) of the CRTA and section 7 of the Accident Claims Regulation (ACR) give the CRT jurisdiction over the determination of liability and damages claims, including loss or damage to property, up to \$50,000.
7. 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
8. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination

of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.

9. Section 42 of the CRTA says that 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.

Personal injury claim

10. In his initial Dispute Notice Mr. Narayan claimed \$10,000 in non-pecuniary (pain and suffering) damages for a thumb injury he says resulted from damaged door. Mr. Narayan later withdrew his claim for personal injury damages and filed an Amended Dispute Notice claiming only \$4,000 to repair his damaged vehicle.

ISSUES

11. The issues in this dispute are:
 - a. Whether any of the respondents are responsible for Mr. Narayan's vehicle damage, and
 - b. If so, what is the appropriate remedy?

BACKGROUND, EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Mr. Narayan must prove his claims on a balance of probabilities, meaning "more likely than not". 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. I note neither KBK nor Mr. Kumar chose to submit any documentary evidence, despite being given the opportunity to do so.

13. At the outset, I dismiss Mr. Narayan's claims against ICBC and Mr. Kumar personally. First, Mr. Narayan did not make any specific allegations against ICBC, other than saying that it is "not honouring its obligations" to settle his claim. I find Mr. Narayan has not proven ICBC was negligent or breached any of its obligations to Mr. Narayan, so I dismiss his claims against it.
14. Second, Mr. Narayan's claims against Mr. Kumar personally. Corporations are distinct legal entities, separate from their directors, officers, and employees. Mr. Kumar is undisputedly KBK's owner, and the undisputed evidence is that Mr. Narayan brought his van to KBK, a corporation, for repairs, not to Mr. Kumar personally.
15. Additionally, under common law, an employer is generally held liable for the actions of employees committed in the course of their employment. This is known as "vicarious liability" and it generally means if Mr. Kumar was negligent in repairing and operating Mr. Narayan's vehicle, KBK as his employer would be responsible for any damages. In this dispute, there is no allegation Mr. Kumar was not acting in the usual course of business. I find at all times Mr. Kumar was acting on KBK's behalf. For these reasons, I dismiss Mr. Narayan's claims against Mr. Kumar in his personal capacity.
16. I turn then to the claims against KBK.
17. The background facts are not in dispute. Mr. Narayan took his van to KBK to have brake repairs done. The repairs were completed by December 27, 2019, though Mr. Narayan was not able to pick up the vehicle until the next day. The parties agree Mr. Narayan arrived to pick up his vehicle on December 28, 2019 and found the front left fender and driver's side door were damaged. There is no dispute the damage was not present when Mr. Narayan brought the van to KBK for repairs.

18. When Mr. Narayan asked Mr. Kumar about the damage, Mr. Kumar explained the van was parked in KBK's lot which was accessible by other vehicles, so it must have been involved in a hit and run. Mr. Narayan submitted a hit and run claim with ICBC. ICBC determined the damage was not the result of a vehicle to vehicle contact, but rather happened while the door was open at impact and was overextended.
19. Mr. Narayan says he went back to Mr. Kumar and explained ICBC's decision. Mr. Narayan says Mr. Kumar then admitted to him that the damage happened when the van was on KBK's hoist and Mr. Kumar accidentally reversed the vehicle while the door was open. In support of his position, Mr. Narayan provided a signed statement from his friend, RD. In the statement RD says he was with Mr. Narayan both when he picked up the vehicle from KBK and when Mr. Narayan returned to speak to Mr. Kumar following ICBC's decision about the hit and run claim. RD says at that second meeting, Mr. Kumar admitted the damage happened when Mr. Narayan's vehicle was on KBK's hoist while Mr. Kumar worked on the van.
20. In their Dispute Responses, KBK and Mr. Kumar both say Mr. Kumar never put the vehicle on a hoist, and that the van could have been damaged by anyone while in the parking lot. Neither Mr. Kumar nor KBK provided further substantive submissions, despite the opportunity to do so. Notably, Mr. Kumar nor KBK address RD's statement about Mr. Kumar's admission. So, I accept RD's evidence. On balance, I find Mr. Kumar damaged Mr. Narayan's van while working on it in his shop.
21. The law of bailment applies to this claim. Bailment is about the obligations on one party to safeguard another party's possessions. The bailor is a person who gives the goods or possessions, and the bailee is the one who holds or stores them. A voluntary bailee for reward is someone who agrees to receive the goods as part of a transaction where the bailee gets paid. In caring for a bailor's property, the bailee must exercise reasonable care in all the circumstances (see: *Harris v. Maltman* and *KBM Autoworks*, 2017 BCPC 273 and *Pearson v. North River Towing (2004) Ltd.*, 2008 BCPC 229).

22. Here, KBK undisputedly agreed to take possession of Mr. Narayan's vehicle and repair it in return for payment. So, I find Mr. Narayan was a bailor and KBK was a voluntary bailee for reward.
23. Normally, in civil cases, an applicant bears the burden to prove a respondent's liability. However, where property is damaged while in a bailee's possession, there is a presumption the bailee was negligent. The bailee must then rebut the presumption to avoid liability. This is because the bailee is in the best position to explain what actually happened to the goods (see: *Cahoon v. Isfeld Ford*, 2009 BCPC 334 at paragraph 12).
24. There is no dispute KBK worked on Mr. Narayan's vehicle and then parked it outside the shop in an open parking lot. As noted, there is no dispute Mr. Narayan's vehicle was undamaged when he dropped it off with KBK and was damaged when he picked it up.
25. Even if Mr. Kumar denied admitting that he damaged the van's door, I find KBK has not met the burden of proving it was not negligent in dealing with Mr. Narayan's vehicle. I find KBK is responsible for the van's damage.
26. So, what are Mr. Narayan's damages? Mr. Narayan claims \$4,000 as the amount to repair his vehicle. A February 11, 2020 repair estimate in evidence says the cost to repair the damage is \$3,773.17. However, a vehicle valuation report says the 2008 van was only worth \$2,816.83.
27. It is undisputed Mr. Kumar attempted to fix the van by replacing the door. Mr. Narayan says the door did not match, the power locks did not work, and the fender was not replaced. There is no later estimate to fix the vehicle that takes into account Mr. Kumar's repairs to date. So, I find the best evidence of damages is the valuation report. I note no party raised any issue with the vehicle's valuation. Therefore, I find KBK must reimburse Mr. Narayan \$2,816.83, the total value of his vehicle.

FEES, EXPENSES AND INTEREST

28. The Court Order Interest Act applies to the CRT. I find Mr. Narayan is entitled to pre-judgment interest on the \$2,816.83 award from December 28, 2019, the day the damage was discovered, to today's date. This equals \$98.77.
29. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Narayan was successful against KBK, I find KBK must reimburse Mr. Narayan \$175 in tribunal fees. As Mr. Narayan's claim against ICBC was dismissed, I find Mr. Narayan must reimburse it \$25 in tribunal fees. No dispute-related expenses were claimed.

ORDERS

30. Within 30 days of the date of this decision, I order KBK to pay Mr. Narayan a total of \$3,090.60, broken down as follows:
- a. \$2,816.83 in damages,
 - b. \$98.77 in pre-judgment interest under the Court Order Interest Act, and
 - c. \$175 in tribunal fees.
31. Within 30 days of the date of this decision, I order Mr. Narayan to pay ICBC a total of \$25 as reimbursement of tribunal fees.
32. Mr. Narayan and ICBC are also entitled to post-judgment interest on their respective awards, as applicable.
33. Mr. Narayan's claims against Mr. Kumar and ICBC are dismissed.

35. Under section 57 and 58 of the CRTA, a validated copy of the CRT's order can be enforced through the Supreme Court of British Columbia or the Provincial Court of British Columbia if it is under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

Andrea Ritchie, Vice Chair