



Civil Resolution Tribunal

Date Issued: July 19, 2023

File: AR-2022-007846

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Tse v. ICBC*, 2023 BCCRT 604

BETWEEN:

ALBERT K.K. TSE

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Albert K.K. Tse, was in a motor vehicle accident on July 13, 2022. Mr. Tse says the respondent insurer, Insurance Corporation of British Columbia (ICBC),

incorrectly determined responsibility for the accident. ICBC held Mr. Tse 100% responsible, but Mr. Tse says he should be found 0% responsible instead.

3. ICBC says it acted reasonably in its liability assessment and determining Mr. Tse was 100% at fault.
4. Mr. Tse represents himself. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over accident claims brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(d) of the CRTA and Part 2 of the *Accident Claims Regulation* (ACR) give the CRT jurisdiction over accident responsibility determinations.
6. 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.
7. 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. 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.
8. 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.

ISSUES

9. The issues in this dispute are:
 - a. Whether ICBC acted improperly or unreasonably in assigning responsibility for the accident, and
 - b. If so, to what extent is the applicant responsible for the accident?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Tse must prove his claim 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.
11. On July 13, 2022, Mr. Tse was in the left turn lane facing southeast on Kingsway at Fraser Street in Vancouver, British Columbia. Mr. Tse says he started to turn left when Kingsway’s light was yellow. Mr. Tse says once he started his turn, a third party, IH, entered the intersection from Kingsway, the opposite direction of Mr. Tse, on a “late yellow” light and the 2 vehicles collided in the intersection.
12. Mr. Tse says ICBC improperly held him 100% responsible for the accident. He says his witness’s statement was not properly considered, nor was Mr. Tse’s past driving history taken into account. Mr. Tse argues that his version of events should be given more weight because he is a more experienced driver than IH, and it is more likely that IH, as a new driver, would be at fault for the accident.
13. To succeed in his claim against ICBC, Mr. Tse must first prove ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, Mr. Tse must prove that he is less responsible for the accident than ICBC assessed.
14. Further to section 10 of the ACR, **both** parts of this test must be proven. This means that even if Mr. Tse can prove he is less responsible for the accident than ICBC

assessed, he will not be successful in his claim if he cannot prove ICBC acted improperly or unreasonably.

15. I turn to the first part of the 2-part test.

Did ICBC act improperly or unreasonably in assigning responsibility for the accident?

16. Section 10(a) of the ACR essentially codifies the existing case law about whether ICBC acted “properly or reasonably” in administratively assigning responsibility for accidents (see: *Singh v. McHatten*, 2012 BCCA 286 referring to *Innes v. Bui*, 2010 BCCA 322). As noted above, to succeed in his claim, Mr. Tse must prove ICBC acted improperly or unreasonably in assigning him sole responsibility for the July 13, 2022 accident. Merely disagreeing with ICBC’s decision does not mean ICBC acted improperly or unreasonably. Similarly, even in a situation where I would have come to a different conclusion on the apportionment of responsibility, that does not mean ICBC acted improperly or unreasonably.

17. As mentioned, Mr. Tse argues ICBC acted improperly or unreasonably on 2 main points. First, that it did not properly consider his witness’s statement, and second, that it did not give adequate weight to Mr. Tse’s driving history.

18. I will deal first with the witness statement. Mr. Tse argues ICBC “unjustifiably disregarded” the witness’s statement. ICBC says the witness’s statement did not corroborate either Mr. Tse’s or IH’s version of events, so the statement should be given no weight.

19. In Mr. Tse’s first notice of loss provided on July 13, 2022, he stated he thought IH was in the right curb lane of Kingsway before the accident happened. Later, in several August 2022 emails, Mr. Tse argued IH was actually in the left turn lane and then at the last minute decided to go straight through the intersection, causing the accident. Mr. Tse maintains that position in this dispute.

20. In both IH's statements to ICBC they say they were driving straight through Kingsway in lane 2 of 4, which is neither the right curb lane nor the left turn lane.
21. The witness, PE, gave a telephone statement to ICBC on July 18, 2022. In that statement PE said IH was in the curb lane and entered the intersection on a yellow light when Mr. Tse was starting his left turn, also on a yellow light. PE said they were unable to actually see the collision as they were in the vehicle immediately behind Mr. Tse, who was driving a white van that obstructed PE's view.
22. I do not agree with Mr. Tse that ICBC improperly "disregarded" PE's statement. I find ICBC reasonably considered the statement, found it was unhelpful given it was inconsistent with both Mr. Tse's and IH's versions of how the accident happened, and because PE admittedly was unable to see the actual collision.
23. I turn then to Mr. Tse's argument that ICBC failed to adequately take his driving history into consideration. Mr. Tse says that IH only held a learner's license, while he (Mr. Tse) has over 20 years of accident-free driving. He says, therefore, that his version of events should be preferred because it is more likely that an inexperienced driver would be at fault for a collision. I disagree. Just because a driver is less experienced, does not mean they are automatically at fault for an accident.
24. I also note Mr. Tse says IH was in breach of his learner's license conditions at the time of the accident. However, that is a matter between IH and ICBC, and is not the subject of this dispute.
25. Based on the evidence before me, I find ICBC reasonably considered statements and photographs from both drivers, PE's witness statement, and the relevant law. I find Mr. Tse has not proven ICBC failed to consider any evidence or otherwise acted improperly or unreasonably in investigating the accident and assigning fault. So, I find Mr. Tse has not satisfied section 10(a) of the 2-part test. It follows that Mr. Tse's claim must fail.
26. Given this, I do not need to consider part 2 of the test, set out in section 10(b) of the ACR.

FEES, EXPENSES AND INTEREST

27. 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. Mr. Tse was not successful, so I dismiss his claim for reimbursement of tribunal fees. ICBC did not pay any fees and neither party claimed dispute-related expenses.

ORDER

28. Mr. Tse's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair