



Civil Resolution Tribunal

Date Issued: August 11, 2023

File: AR-2022-007821

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Wesley v. ICBC*, 2023 BCCRT 677

BETWEEN:

DEANNA WESLEY and RAYMOND PATTY MEDWAY

APPLICANTS

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 applicants, Deanna Wesley and Raymond Patty Medway, say they were incorrectly held responsible for a motor vehicle accident on July 13, 2022. The

applicants deny any collision occurred at all. At the time, Ms. Medway was driving, and Ms. Wesley was a passenger and is the vehicle's registered owner.

3. The applicants say the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly held the applicants 100% responsible. They say they should be held 0% responsible instead.
4. ICBC says it acted reasonably in its liability assessment and determining the applicants were at fault.
5. Ms. Wesley represents the applicants. 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 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.
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. 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 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

10. 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, if any, are the applicants responsible for the accident?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicants must prove their 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.
12. On July 13, 2022, the applicants were in a coffee shop parking lot in Coquitlam, British Columbia, in their 2002 Ford Ranger. When they pulled into the parking lot, a vehicle in front of them was blocking their way, so Ms. Medway reversed the Ford Ranger and then went around the front vehicle. None of this is disputed.
13. The applicants say after this, a third party, RM, approached them and told them they had reversed into his vehicle, a 1967 Pontiac Beaumont, which the applicants deny.
14. The applicants say ICBC improperly held them 100% responsible for a collision they argue did not occur. They say ICBC performed an “incompetent biased investigation”, or no investigation at all. They say Ms. Wesley’s witness statement was “dismissed”, and the other witnesses are liars. The applicants argue they should be held 0% responsible for the alleged accident.

15. To succeed in their claim against ICBC, the applicants must first prove ICBC acted improperly or unreasonably in assigning responsibility for the accident to them. Second, the applicants must prove that they are less responsible for the accident than ICBC assessed.
16. Further to section 10 of the ACR, **both** parts of this test must be proven. This means that even if the applicants can prove they are less responsible for the accident than ICBC assessed, they will not be successful in their claim if they cannot prove ICBC acted improperly or unreasonably.
17. I turn to the first part of the 2-part test.

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

18. 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). To succeed in their claim, the applicants must prove ICBC acted improperly or unreasonably in investigating the accident and assigning them 100% responsibility for the July 13, 2022 accident.
19. As noted above, the applicants say ICBC failed to perform an adequate investigation of the alleged accident and did not properly accept available witness statements. ICBC says it took statements from the parties involved, independent witnesses, and had the damage assessed by its internal Material Damages team. ICBC argues it acted reasonably in its accident investigation and responsibility assessment.
20. ICBC provided the applicants with a CL722. The CL722 in evidence is dated May 29, 2023, but I infer that is a re-print date, as both parties refer to the CL722 as being dated September 23, 2022. However, I find nothing turns on the specific date as there is no dispute the applicants filed their claim in compliance with the ACR and CRTA.

21. The CL722 shows that ICBC obtained statements from Ms. Wesley, RM, and 2 independent witnesses, TWP and BE.
22. RM reported that he was behind the applicants' Ford Ranger in the parking lot when they began to back up. They said other people in the parking lot yelled at the driver to stop but she did not, and ultimately the Ford Ranger's rear bumper struck RM's front bumper.
23. Ms. Wesley provided a signed statement to ICBC on July 15, 2022. In her statement she said that she was a passenger while Ms. Medway was the driver. She said their vehicle was blocked so they "carefully backed up" and went around the other vehicle. Ms. Wesley stated RM's vehicle was directly behind them. She denied feeling any "bump", and says there was no impact with RM's vehicle. I note there is no statement from Ms. Medway, the driver, in evidence.
24. The CL722 details statements from 2 independent witnesses. The first, given to ICBC by telephone on July 15, 2022, is from TWP. In their statement TWP said that they did not know any of the individuals involved in the collision. TWP said they were in a vehicle side-by-side with the Ford Ranger in the parking lot when it started backing up. TWP said they saw the Pontiac Beaumont behind the Ford Ranger and TWP yelled at Ms. Medway to stop "probably six times". TWP said the Ford Ranger's rear bumper hit RM's front bumper.
25. The next statement was from BE, also given to ICBC by telephone, on July 21, 2022. BE stated they did not know either of the drivers involved in the accident. BE was a pedestrian, approximately 20 to 30 feet away. They said they saw the Pontiac Beaumont lined up behind the Ford Ranger, which then reversed into the Pontiac. BE said people were yelling for the Ford's driver to stop before the vehicles collided.
26. ICBC's Material Damages department also assessed both vehicles through photographs and measurements. A Material Damages Estimator, Paul Batistini, described the height of the 2 vehicles' bumpers, and wrote that it was possible that the vehicles made contact, but there was no visible transfer debris evident. Paul

Batistini also wrote that due to factory placement of mounting bracket apparatus on the Pontiac, not much force is required to buckle its face bar.

27. ICBC's employee's qualifications are not before me. I find Paul Batistini's opinion does not qualify as expert evidence under the CRT's rules. However, I accept the opinion was provided to and relied on by ICBC in the course of its investigation of the incident and its decision that the applicants' and RM's vehicles were involved in a collision.
28. ICBC also provided an expert report it requested for the purposes of this CRT dispute. Jonathan Gough, Professional Engineer with CEP Forensic, provided a report dated May 2, 2023. In that report, Mr. Gough explained that both the Ford Ranger and Pontiac Beaumont had pre-existing bumper damage that was not the result of the July 13, 2022 incident. He also explained that, based on the measurements of both vehicles, there would be an overlap of approximately 5 cm or 2 inches where the vehicles could have collided. He also stated that the Pontiac Beaumont's bumper is more "decorative" and requires little force to deform. He stated it would be possible for the Pontiac's bumper to sustain damage while the Ford's bumper did not. In summary, he stated it was not possible to determine with certainty whether the Pontiac's damage was related to the incident or not.
29. CRT rule 8.3 requires an expert to give a statement of their qualifications in evidence, which ICBC did not provide for Mr. Gough. However, under CRT rule 1.2(2), I have discretion to waive the requirements of rule 8.3 to promote the fair and efficient resolution of a dispute. Prior CRT decisions have applied rule 1.2(2) to permit expert evidence without a statement of qualifications where the other party has not objected to the expert's qualifications. As the applicants do not explicitly challenge Mr. Gough's qualifications, I find Mr. Gough is an expert with respect to assessing motor vehicle damage, and I accept his evidence as expert evidence under the CRT's rules. However, while I accept Mr. Gough's evidence as expert evidence, I find it is not helpful in determining whether ICBC acted improperly or unreasonably in the

circumstances as Mr. Gough's opinion is inconclusive about whether the vehicles collided.

30. Based on the evidence before me, I find ICBC reasonably took statements from the individuals involved, the 2 witnesses, and had its employees investigate the vehicles' damage. Although neither Paul Batistini nor Mr. Gough were able to confirm whether the vehicles collided, I find the best evidence that they did is from the 2 independent witnesses.
31. Despite the applicants' assertions that the witnesses are "liars" who were compelled to provide evidence by RM, I find there is simply no evidence to support that argument. The applicants argue that the witnesses could not possibly have seen the vehicles collide unless they were laying on the floor under the vehicles' bumpers. I do not accept this argument.
32. On balance, I find ICBC reasonably considered the evidence before it and the relevant law. I find the applicants have not proven ICBC acted improperly or unreasonably in investigating the accident and assigning fault. So, I find the applicants have not satisfied section 10(a) of the 2-part test. It follows that the applicants' claim must fail.
33. 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

34. 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 the applicants were not successful, I dismiss their claim for reimbursement of tribunal fees.
35. ICBC was successful but did not pay any tribunal fees. ICBC seeks reimbursement of \$1,077.83 for Mr. Gough's report as a dispute-related expense. I find ICBC is not entitled to reimbursement for this report. First, because ICBC failed to properly

include Mr. Gough's expert qualifications, as required. Second, because I find the report was not helpful in determining the issue before me. So, I dismiss ICBC's claim for reimbursement of dispute-related expenses.

ORDER

36. The applicants' claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair