



Civil Resolution Tribunal

Date Issued: August 30, 2023

File: AR-2022-009608

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Liu v. ICBC*, 2023 BCCRT 740

B E T W E E N :

XIANGQIAN LIU

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Xiangqian Liu, is the registered owner of a vehicle that was involved in a motor vehicle accident on May 3, 2022. Mr. Liu's wife, SZ, was driving Mr. Liu's vehicle at the time of the accident. Mr. Liu says the respondent insurer, Insurance

Corporation of British Columbia (ICBC), incorrectly determined that SZ was fully responsible for the accident. He says SZ should be held 0% responsible instead.

3. ICBC says it acted reasonably in its liability assessment and determining SZ was 100% at fault.
4. Mr. Liu is self-represented. 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.

9. I was initially unable to view 2 videos that ICBC submitted into evidence. At my request, CRT staff asked ICBC to re-submit the videos, which it did. The videos show the area where the accident occurred but were taken on a date sometime after the accident. The re-submitted videos were provided to Mr. Liu, and he was given an opportunity to provide submissions on them. So, I find there is no procedural unfairness in admitting the late videos. Bearing in mind the CRT's mandate includes flexibility, I have admitted and considered ICBC's videos in my analysis below.

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, is SZ responsible for the accident?

BACKGROUND, EVIDENCE, AND ANALYSIS

11. In a civil claim such as this, Mr. Liu as the applicant 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 refer only to what I find is necessary to explain my decision. I note that Mr. Liu did not provide any final reply submissions despite having the opportunity to do so.
12. On May 3, 2022, SZ drove her child to school in Mr. Liu's vehicle. In the school parking lot, there are 3 lanes where vehicles are permitted to stop and wait for passengers to load and unload. A third-party driver was stopped at the front of the left-most lane. SZ was travelling in a fourth no-stopping through lane, immediately to the left of the 3 drop-off aisles. None of this is disputed.
13. SZ reported to ICBC that as she travelled straight in the through-lane, she heard a scratching noise, so she stopped and got out. SZ reported that the third party told her they did not see SZ and had hit the back of SZ's vehicle as they pulled out to leave.

14. In contrast, the third party reported to ICBC that they were at a complete stop when SZ came from the through lane and cut in front of their vehicle, colliding with the left front corner of the third party's vehicle.
15. Mr. Liu says that ICBC improperly held SZ 100% responsible for the collision. He says ICBC failed to investigate the vehicle damage to determine whether it matched between the 2 vehicles. Mr. Liu also says ICBC improperly relied on only the third party's version of the accident. Mr. Liu argues that SZ should be held 0% responsible for the accident.
16. To succeed in his claim against ICBC, Mr. Liu must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to SZ. Second, Mr. Liu must prove that SZ is less responsible for the accident than ICBC assessed.
17. Under section 10 of the ACR, Mr. Liu must prove **both** parts of this test. This means that even if Mr. Liu can prove that SZ 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.
18. With that, I turn to the first part of the 2-part test.

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

19. Section 10(a) of the ACR essentially codifies existing case law that says the issue in a claim against ICBC about its liability determination is whether ICBC acted "properly or reasonably" in administratively assigning responsibility for the accident (see *Singh v. McHatten*, 2012 BCCA 286, referring to *Innes v. Bui*, 2010 BCCA 322). To succeed in his claim, Mr. Liu must prove that ICBC acted improperly or unreasonably in investigating the accident and assigning SZ 100% responsibility for the May 3, 2022 accident.

20. As noted, Mr. Liu says ICBC acted improperly or unreasonably by failing to line the 2 vehicles up to determine whether the damage matched, and by considering only the third party's version of the accident.
21. I start with the vehicle damage.
22. It is undisputed that ICBC did not assess either vehicle in person after the accident. However, I find that does not mean ICBC failed to investigate the vehicles' damage, as Mr. Liu submits. It is undisputed that both Mr. Liu and the third party provided photos of their vehicles to ICBC showing the damage allegedly sustained. ICBC also obtained photos of the third party's vehicle from a repair shop, which included measurements.
23. ICBC provided its file notes from Rick Hull of its Material Damages department, who assessed the vehicles through the photos provided. Rick Hull noted that from the vehicles' damage, both driver's version of the accident was possible. Rick Hull noted that if the accident occurred as SZ described, the third party would have had to turn to the left quite sharply. That is, the third party's vehicle had to have been at about a 45-degree angle to SZ's vehicle when the impact happened, for the damage to be located on the third party's front left bumper, rather than on the side. Rick Hull also noted that the damage to SZ's vehicle showed it was in motion at the time of impact. However, the damage to the third party's vehicle was inconclusive about whether it was stationary or in motion, as the damage would be the same in either scenario.
24. Rick Hull's position and qualifications are not before me. I find their opinion does not qualify as expert evidence under the CRT's rules. However, I accept that ICBC relied on that opinion in the course of its accident investigation.
25. I also accept ICBC's submission that it does not have the capacity to conduct an in-person assessment of vehicle damage for every collision. I have previously found that photographs are sufficient to assess vehicle damage, and that it is not necessary for ICBC to view a vehicle in person to discharge its duty to properly investigate accident responsibility: see *Tarrant v. ICBC*, 2020 BCCRT 695 and *Dixon v. ICBC*, 2021

BCCRT 1137. I find that is also the case here, and that Mr. Liu has not established ICBC acted unreasonably in relying on photos of the vehicle damage to conduct its investigation.

26. I turn to ICBC's reliance on the third party's statement.
27. ICBC provided Mr. Liu with a CL722, which is a detailed responsibility letter, dated October 28, 2022. The CL722 stated that in addition to Rick Hull's opinion, ICBC considered the 2 drivers' statements, diagrams they each submitted, photos, and the video evidence referred to above showing the parking lot where the accident occurred, taken by the third party.
28. I find that ICBC considered all of that evidence, including SZ's statement. The CL722 stated that while SZ reported the third party pulled out from a stopped position, the third party denied being in motion and there was no other evidence proving the third party was moving when the accident occurred. Specifically, it referred to Rick Hull's damage assessment and also noted that one of the photos taken immediately after the impact showed SZ's vehicle in front of the third party. That photo shows SZ's vehicle parked at an angle in front of the third party's vehicle, which appears to be still fully in the left-most stopping lane. In other words, I find that photo is consistent with the third party's statement that SZ maneuvered in front of their vehicle at an angle.
29. Further, the CL722 stated that the video footage also supported the third party's account of the accident, as it showed vehicles in the through lane regularly cut in front of stopped vehicles in the far-left stopping lane to access another drop-off area at the front of the school. I find ICBC reasonably concluded that in the absence of any supporting evidence that the third party was in motion at the time of the impact, the third party's version was the more likely version given the available evidence.
30. Overall, I disagree that ICBC considered only the third party's statement. Rather, I find that ICBC properly considered both driver's statements and simply concluded that the other evidence did not support SZ's version. I find Mr. Liu has not established

that ICBC acted improperly or unreasonably in investigating the accident and assigning fault. Therefore, I find Mr. Liu has not satisfied section 10(a) of the 2-part test, and so his claim must fail.

31. Given this conclusion, I do not need to consider part 2 of the test, set out in section 10(b) of the ACR.

FEES AND EXPENSES

32. Under section 49 of the CRTA and CRT rules, a successful party is generally entitled to recovery of their tribunal fees and reasonable dispute-related expenses. Mr. Liu was not successful, and so I find he is not entitled to reimbursement of his tribunal fees. As ICBC was the successful party, I order Mr. Liu to reimburse ICBC \$25 in paid tribunal fees.

33. Neither party claimed dispute-related expenses.

ORDERS

34. I dismiss Mr. Liu's claims.
35. Within 30 days of this decision, I order Mr. Liu to pay ICBC \$25 as reimbursement of its tribunal fees.
36. 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.

Kristin Gardner, Tribunal Member