



Civil Resolution Tribunal

Date Issued: September 20, 2023

File: AR-2022-006602

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Chu v. ICBC*, 2023 BCCRT 800

BETWEEN:

RICHARD CHU

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, Richard Chu, was in a motor vehicle accident on June 7, 2022. Mr. Chu says the respondent insurer, Insurance Corporation of British Columbia (ICBC),

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

3. ICBC says it acted reasonably in its liability assessment and determining Mr. Chu was 100% at fault.
4. Mr. Chu 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.

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, if any, is the applicant responsible for the accident?

BACKGROUND, EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Mr. Chu must prove his claims on a balance of probabilities, meaning “more likely than not”. Under the ACR, to succeed in his claim against ICBC, Mr. Chu must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, Mr. Chu must prove he is less responsible for the accident than ICBC assessed.
11. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if Mr. Chu can prove he is less responsible for the accident than ICBC assessed, he will not be successful if he cannot prove ICBC acted improperly or unreasonably. 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 June 7, 2022, Mr. Chu was traveling directly behind a dump truck with an attached dump trailer on 15th Street in West Vancouver, British Columbia. Both vehicles turned right onto Camelot Road. Mr. Chu says he was stopped approximately 1.5 car lengths behind the dump truck when its driver, SN, started reversing. Mr. Chu says he “laid on the horn” but SN did not stop, and the truck’s trailer collided with the front of Mr. Chu’s vehicle. In contrast, SN reported to ICBC that they were stopped on Camelot Road and that Mr. Chu must have run into the trailer, because they deny reversing the truck at all. As a result, ICBC held Mr. Chu 100% responsible for the accident for following SN’s truck too closely.

13. Mr. Chu says ICBC improperly held him 100% responsible for the accident. Specifically, he says ICBC failed to investigate SN's fraudulent claim, failed to "forensically inspect" the vehicles, and ignored alleged inconsistencies in SN's statements.

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

14. 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. Chu must prove ICBC acted improperly or unreasonably in assigning him sole responsibility for the June 7, 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.

15. First, to the extent Mr. Chu alleges SN somehow submitted a "fraudulent claim", I find there is simply no evidence to support that assertion. Similarly, although Mr. Chu argues SN's statements are inconsistent, I disagree. In each of SN's 3 statements, they explain they turned right from 15th Street onto Camelot Road and stopped their truck. They said they were parked and did not reverse. I find SN's statements are consistent. So, I find ICBC did not fail to follow up on any inconsistencies, as alleged by Mr. Chu.

16. Next, Mr. Chu says ICBC failed to "forensically inspect" the vehicles, and the accident site, after the accident. ICBC says it is not its standard practice to complete a material damage review on every claim.

17. Here, I find Mr. Chu has not provided any evidence that a "forensic inspection" would have made any difference in ICBC's responsibility assessment. In fact, as a result of this claim, ICBC did have photos and measurements of the vehicles' damage

inspected by one of its employees, Material Damage Manager Scott Panov, who provided an opinion on the damage. Scott Panov's opinion was that the damage was consistent with the 2 vehicles' colliding, but the damage could have been caused either by Mr. Chu rear-ending SN, or by SN reversing the truck into Mr. Chu.

18. Scott Panov's qualifications are not before me. So, I find their opinion does not qualify as expert evidence under the CRT's rules. However, I accept the opinion was provided to ICBC and confirms an accident did occur. I also accept the opinion confirms the damage does not provide any meaningful insight into which vehicle struck the other. Given the accident's circumstances and the very minor damage involved, I find ICBC did not act unreasonably or improperly in failing to inspect the vehicles sooner, or for failing to visit the accident site.
19. Based on the evidence before me, I find ICBC reasonably took statements from both drivers and applied the relevant law. Although Mr. Chu disagrees with ICBC's categorization of the accident as a "rear-end accident", I find ICBC accurately applied the relevant case law, which undisputedly imposes a reverse onus on the rear driver to prove the collision was not their fault, and reasonably concluded Mr. Chu did not do so.
20. On balance, I find Mr. Chu has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning fault. So, I find Mr. Chu has not satisfied section 10(a) of the 2-part test. It follows that Mr. Chu's claim must fail.
21. Given this, I do not need to consider whether Mr. Chu should be held less responsible for the accident, which is part 2 of the test as set out in section 10(b) of the ACR.

FEES, EXPENSES, AND INTEREST

22. 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. Chu was unsuccessful, I dismiss his claim for reimbursement of tribunal fees. ICBC was successful but did not pay any tribunal fees.

ORDER

23. Mr. Chu's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair