



Civil Resolution Tribunal

Date Issued: September 27, 2023

File: AR-2022-010159

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Hsu v. ICBC*, 2023 BCCRT 824

B E T W E E N :

WEI HSIANG HSU

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Wei Hsiang Hsu, was in a motor vehicle accident with another driver, JM, on May 8, 2022. Mr. Hsu says the respondent insurer, Insurance Corporation of

British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Mr. Hsu 50% responsible, but Mr. Hsu says he should be found 0% responsible instead.

3. ICBC says it acted reasonably in determining Mr. Hsu was 50% responsible for the accident. It says this dispute should be dismissed.
4. Mr. Hsu 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.
7. Section 39 of the CRTA says 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.

Preliminary issue – evidence

8. I was unable to open one piece of evidence ICBC submitted. It is entitled "Video 3 216th Street". In an email in evidence from Mr. Hsu to ICBC, he says this video shows him "simply driving" and maintaining a good distance. Based on this description, and my findings below, I find I can issue my decision without seeing this evidence. I say this because ICBC submitted 7 other clips of dash camera footage, one of which Mr.

Hsu also submitted. I find these clips sufficiently show the events leading up to the accident and the accident itself. So, bearing in mind the CRT's mandate that includes proportionality, speed, and efficiency, I did not ask ICBC to provide another copy of this evidence.

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 Mr. Hsu responsible for the accident?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant Mr. Hsu 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. Hsu must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to him. Second, Mr. Hsu 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. Hsu 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. The accident occurred on May 8, 2022. Dash camera footage shows that leading up to the accident, Mr. Hsu was following JM's vehicle as both were driving northbound on 216th Street in Langley, BC. When both vehicles turned right onto Highway 10 (also called Glover Road), JM suddenly slowed down and Mr. Hsu swerved to the right to pass them on the right shoulder of the road.

13. As the vehicles continued on Highway 10 approaching Smith Crescent, JM passed Mr. Hsu's vehicle also using the right shoulder, and then cut back into the northbound lane ahead of Mr. Hsu. JM then stopped, and Mr. Hsu's front grille struck JM's rear bumper. This resulted in some damage to Mr. Hsu's front grille and internal electronics. There was no reported damage to JM's vehicle.
14. Following the accident, JM got out of their vehicle and physically assaulted Mr. Hsu. A police report in evidence confirms that RCMP attended in response to the assault.
15. Following its investigation, ICBC held Mr. Hsu 50% responsible for the accident. Mr. Hsu says ICBC did so improperly or unreasonably. He says that he did everything he could to avoid the accident, and that ICBC wrongfully concluded that he had an opportunity to avoid it.
16. I turn to the first part of the 2-part test.

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

17. 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. Hsu must prove ICBC acted improperly or unreasonably in assigning him 50% responsibility for the 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.
18. As noted above, Mr. Hsu's primary argument is that ICBC incorrectly concluded that he had an opportunity to avoid the accident. He submitted a copy of ICBC's CL722, or detailed responsibility assessment. In it, ICBC references witness statements as well as dash camera footage provided by Mr. Hsu. These statements and footage are also evidence in this dispute.

19. I note that ICBC undisputedly did not take a statement from JM other than their initial brief report of the accident. Emails in evidence show ICBC attempted to obtain a statement from JM by contacting JM's lawyer, but JM did not provide one. I find ICBC made reasonable efforts to obtain a statement and that doing so likely would not have changed its decision, as it specifically notes that it relies on objective evidence like dash camera footage and independent witness statements. In any event, Mr. Hsu does not argue that ICBC acted unreasonably in failing to obtain a statement from JM.
20. Similarly, the evidence shows that ICBC was unable to obtain a statement from 1 of the 4 available witnesses. Again, Mr. Hsu does not argue this was improper or unreasonable, and in any event I find it was reasonable for ICBC to assess responsibility based on the statements of the 3 witnesses it could reach, in addition to the dash camera footage.
21. The CL722 says that after reviewing the witness statements and dash camera footage, ICBC applied sections 144 and 162 of the *Motor Vehicle Act* (MVA) in holding Mr. Hsu 50% responsible for the accident. Section 144 of the MVA requires a driver to drive with due care and attention, with reasonable consideration for other persons using the highway, and at a speed that is not excessive relative to the road, traffic, visibility or weather conditions. Section 162 says that a driver must not follow another vehicle more closely than is reasonable and prudent, having due regard for the vehicle's speed and the amount and nature of traffic.
22. In the CL722, ICBC acknowledged Mr. Hsu's report that JM stopped their vehicle intentionally after passing Mr. Hsu on the right shoulder. ICBC agreed with this and said that it was confirmed by witness statements and dash camera footage in evidence. However, it concluded based on its review of the dash camera footage that Mr. Hsu had an opportunity to stop or increase the distance between the vehicles before the accident occurred. So, it determined that Mr. Hsu was 50% responsible for the accident.

23. Based on the evidence before me, I find in conducting its investigation ICBC took statements from Mr. Hsu and 3 witnesses, reviewed the dash camera footage of the accident and the events leading up to it, and obtained a copy of the police report generated as a result of the assault. On balance, I find ICBC reasonably considered the evidence before it. The relevant case law undisputedly imposes a reverse onus on the rear driver to prove the collision was not their fault, and I find ICBC reasonably concluded based on the dash camera footage that Mr. Hsu did not fully do so.
24. While I acknowledge Mr. Hsu does not agree with ICBC's conclusion about the accident or his responsibility for it, I find he has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find Mr. Hsu has not satisfied section 10(a) of the 2-part test. It follows that I must dismiss his claim.
25. Given this, I do not need to consider whether Mr. Hsu 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.
26. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. In submissions for his claim for dispute-related expenses, Mr. Hsu says that he should be reimbursed his \$250 insurance deductible, plus his increased insurance premiums due to the accident. I find these amounts are substantive claims, and not expenses that are "directly related to the conduct of the tribunal process" as required by CRT Rule 9.5(2) for dispute-related expenses. As Mr. Hsu did not make these claims in his Dispute Notice, I find they are not properly before me. In any event, Mr. Hsu was not successful in this dispute, and so I find he is not entitled to reimbursement of his tribunal fees or claimed dispute-related expenses.
27. As ICBC was the successful party, I order Mr. Hsu to reimburse ICBC \$25 in paid CRT fees.

ORDERS

28. I dismiss Mr. Hsu's claims.
29. Within 21 days of this decision, I order Mr. Hsu to pay ICBC \$25 as reimbursement of its CRT fees.
30. ICBC is entitled to post-judgment interest, as applicable.
31. 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.

Alison Wake, Tribunal Member