



Civil Resolution Tribunal

Date Issued: October 3, 2023

File: AR-2022-008073

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Smith v. ICBC*, 2023 BCCRT 836

BETWEEN:

GEORGE A SMITH and VICKI SMITH

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, George A Smith and Vicki Smith, say they were incorrectly held responsible for a motor vehicle accident on August 30, 2022. Mrs. Smith was driving the vehicle at the time, which is co-owned by both Mr. and Mrs. Smith.
3. The Smiths say the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined Mrs. Smith was responsible for the accident. The Smiths say they should be held 0% responsible instead.
4. ICBC says it acted reasonably in its liability assessment and determining Mrs. Smith was at fault.
5. The applicants are self-presented. 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.
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.

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 Mrs. Smith responsible for the accident?

BACKGROUND, EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the Smiths as the applicants must prove their claim on a balance of probabilities, meaning “more likely than not”. Under the ACR, to succeed in their claim against ICBC, the Smiths must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to Ms. Smith. Second, the Smiths must prove Ms. Smith is less responsible for the accident than ICBC assessed.
12. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if the Smiths can prove Mrs. Smith is less responsible for the accident than ICBC assessed, they will not be successful if they 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. I note the Smiths chose not to submit any evidence, despite having the opportunity to do so.
13. On August 30, 2022, Mrs. Smith was traveling westbound on 50th Avenue S in Fort Nelson, British Columbia. Mrs. Smith left a stop sign to continue westbound when her vehicle was struck by a truck driven by J, also heading westbound on 50th Avenue S after having turned off the Alaska Highway, which runs parallel to 50th Avenue S. The

Smiths argue Ms. Smith was already 3/4 through the intersection when the collision occurred and should not have been held responsible for the accident.

14. Notably, the Smiths do not allege ICBC acted improperly or unreasonably in assigning responsibility to Mrs. Smith. Rather, they solely argue ICBC is wrong in its conclusion.

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

15. Section 10(a) of the ACR essentially codifies the existing case law about whether ICBC acted “improperly or unreasonably” 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 their claim, the Smiths must prove ICBC acted improperly or unreasonably in assigning Mrs. Smith sole responsibility for the August 30, 2022 accident. Merely disagreeing with ICBC’s decision does not mean ICBC acted improperly or unreasonably.
16. As noted, the Smiths do not make any specific allegations that ICBC acted improperly or unreasonably. Still, I have reviewed the submissions of both parties, specifically ICBC’s conduct in investigating the accident and assigning fault. For the following reasons, I find the Smiths have not proven ICBC acted improperly or unreasonably, and I dismiss their claim for failing to satisfy section 10(a) of the 2-part test.
17. The evidence and submissions show that ICBC took statements from both Mrs. Smith and J over the phone. There were undisputedly no independent witnesses nor any dash camera footage. On August 31, 2022, ICBC determined Mrs. Smith was responsible for the accident and notified the Smiths, who disagreed with its conclusion. As a result, ICBC continued reviewing the claim and the Smiths sent in photographs and a diagram drawn by Mrs. Smith. ICBC again contacted J for another telephone statement and again, a third time, for clarification of their report details.
18. ICBC also contacted local RCMP who had attended the scene, but ICBC was advised no report was made given the vehicles’ damage was less than \$10,000. Although the Smiths allege the RCMP officer who attended advised Mrs. Smith that J was

responsible for the accident, there is no evidence to support that assertion. Further, a police officer's opinion on fault may be persuasive, but is not determinative in assessing responsibility for an accident.

19. After reviewing the further information, ICBC again advised the Smiths it held Mrs. Smith solely responsible for the accident, to which the Smiths disagreed.
20. As a result, ICBC obtained another statement from each of Mrs. Smith and J, but ultimately maintained the same conclusion that Mrs. Smith was solely responsible. ICBC argues there is no evidence that supports it improperly handled the Smiths' file or made an incorrect liability decision. I agree.
21. Based on the evidence before me, I find there is simply no evidence, nor any allegation, that ICBC acted improperly or unreasonably in the circumstances. As a result, I find the Smiths have not met their burden as required by section 10(a) of the ACR. It follows that the Smiths' claim must fail.
22. Given this, I do not need to consider whether Mrs. Smith 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.
23. I note the Smiths question why there is no yield sign for traffic entering 50th Avenue S from the Alaska Highway. However, that is not a matter within the CRT's jurisdiction, nor does it impact this dispute given J undisputedly faced no traffic control device at the time of this collision.
24. I dismiss the Smiths' claim.

FEES, EXPENSES AND INTEREST

25. 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 Smiths were not successful, I dismiss their claim for reimbursement of tribunal fees.

For the same reason, I find the Smiths must reimburse ICBC the \$25 it paid in fees. No dispute-related expenses were claimed.

ORDERS

26. Within 21 days of the date of this decision, I order the Smiths to pay ICBC a total of \$25 as reimbursement of tribunal fees.
27. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.
28. 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.

Andrea Ritchie, Vice Chair