



Civil Resolution Tribunal

Date Issued: October 23, 2023

File: AR-2023-000014

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Percival v. ICBC*, 2023 BCCRT 904

BETWEEN:

GARRY PERCIVAL and VIDA ANGUS

APPLICANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Garry Percival, was in a motor vehicle accident when driving a vehicle owned by the applicant, Vida Angus, on August 2, 2022. The applicants say the

respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Mr. Percival 100% responsible, but the applicants say he should be found 0% responsible instead.

3. ICBC says it acted reasonably in determining Mr. Percival was 100% responsible for the accident.
4. Mr. Percival represents both applicants. 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.
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.
9. The applicants submitted a document in evidence in a format that I could not open. Through staff, I invited the applicants to resubmit the document in a new format and

they did so. I find this document is a diagram of the accident scene, accompanied by the applicants' arguments and calculations about how the accident occurred. This diagram forms the basis for much of the applicants' written submissions, so I have considered it. However, as my decision does not particularly turn on the contents of this document, and given my conclusion below dismissing the applicants' claims, I did not find it necessary to give ICBC an opportunity to provide submissions about this evidence.

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 Mr. Percival responsible for the accident?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicants must prove their claims on a balance of probabilities (meaning "more likely than not"). Under the ACR, to succeed in their claim against ICBC, the applicants must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to Mr. Percival. Second, the applicants must prove Mr. Percival 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 applicants can prove Mr. Percival 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.

13. On August 2, 2022, Mr. Percival was driving Vida Angus's vehicle eastbound on Highway 97 North in Kelowna, BC. It is undisputed Vida Angus was not present when the accident occurred, and I find they are a party to this dispute only in their capacity as the vehicle's registered owner. For clarity, where I refer to Mr. Percival's vehicle in this decision, I mean Vida Angus's vehicle which Mr. Percival was driving.
14. The accident occurred as follows. Mr. Percival was in the dedicated left turn lane at the intersection of Highway 97 North and Ellis Street. The intersection is controlled by a stoplight. The light's colour at the time of the accident is disputed, as I will discuss further below. A vehicle driven by a third party, J, was driving westbound on Highway 97 North, in the rightmost of 3 through lanes, and was continuing straight through the intersection with Ellis Street. Mr. Percival turned left, and J's vehicle struck Mr. Percival's vehicle on the rear passenger side. A third vehicle was driving behind J's vehicle, and it struck the rear of J's vehicle. The collision between the third vehicle and J's vehicle is not at issue in this dispute.
15. Mr. Percival, J, and the third driver each gave statements to ICBC. I will summarize their statements here. Mr. Percival said that he entered the intersection on a green light and was waiting for an opportunity to make his left turn. He said the light turned yellow, and 3 vehicles in the opposite through lane closest to the centre line stopped. Mr. Percival said he could see no other oncoming traffic, so he proceeded with his left turn. He said that as he was crossing the through lane closest to the centre line, he saw J's vehicle's headlights. He says J did not slow down at this point, and only slammed on the brakes right before entering the intersection. He reported that J's vehicle grazed his right rear bumper.
16. In J's statement, they say they were driving westbound in the curb lane at 60 km/h. Their husband was a passenger. They say the light facing westbound traffic was green when Mr. Percival's vehicle turned left onto Ellis Street in front of them. J says they braked hard but still hit Mr. Percival's rear passenger bumper and were then rear-ended by the third driver. J says that while Mr. Percival said the light was yellow,

J, their husband, the third driver who rear-ended them, and another witness all saw the light was green. I note there is no statement from the other witness in evidence.

17. The third driver said in their statement that they were driving at about 55 km/h and J was driving at about 60 km/h when a silver Volvo (which I find is undisputedly Mr. Percival's vehicle) turned left onto Ellis Street on a green light. They said J slammed on their brakes as the Volvo cut them off. The third driver said they had very little to no reaction time to hit their brakes.
18. There were no other witness statements, and no dashcam or other accident footage. ICBC held Mr. Percival 100% responsible for the accident with J's vehicle. The applicants say ICBC did so improperly or unreasonably. The applicants' primary argument is that ICBC did not consider J's speed as a factor in the collision. They say the accident would not have happened if J had not been speeding, and so Mr. Percival should be held 0% responsible.

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

19. 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 their claim, the applicants must prove ICBC acted improperly or unreasonably in assigning Mr. Percival sole responsibility for the August 2, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.
20. As noted, the applicants' main argument is that J was speeding and that this is what caused the accident. It is undisputed the speed limit on the relevant stretch of Highway 97 North is 50 km/h. The applicants provided detailed calculations in support of their argument that if J had been driving at the posted speed limit of 50 km/h, Mr. Percival's vehicle would have been clear of the intersection by the time J's vehicle reached it and the accident would not have occurred.

21. ICBC says it reasonably assigned responsibility to Mr. Percival based on section 174 of the *Motor Vehicle Act* (MVA), which requires a left-turning driver to yield the right of way to oncoming traffic that is in the intersection or so close to the intersection that it is an immediate hazard. This means that a through driver that is an immediate hazard is the dominant driver, and the left-turning driver is the servient driver. The onus is on the left-turning driver to prove that they started to turn left when it was safe to do so, and that the through driver was not an immediate hazard (see *Nerval v. Khera*, 2012 BCCA 436 at paragraph 33).
22. As noted, the parties disagree about whether the light was green or yellow when Mr. Percival began his left turn. As noted by ICBC, there is no evidence to support the applicants' assertion that the light was yellow, and both J and the third driver stated it was green. I find ICBC reasonably concluded that the light was green when Mr. Percival began his left turn.
23. ICBC acknowledges that both J and the third driver reported that J was driving approximately 60 km/h. However, it says that this is a speed that vehicles generally travel at in this area, and that Mr. Percival ought to have been aware of this as he said that he regularly travels through this intersection on his way to work. ICBC says that J's speed alone does not constitute negligence that would shift responsibility for the accident to J. I agree. A through driver may be an immediate hazard even though they are speeding, and the fact that they are speeding does not mean that they become the servient driver (see *Nerval* at paragraph 38). As noted, the burden was on Mr. Percival to prove he started his left turn in safety.
24. I find ICBC reasonably considered the available evidence, including statements from all drivers involved, and concluded that Mr. Percival had not met this burden. While I acknowledge the applicants' detailed arguments about whether J's speed caused the accident, I note that both J and the third driver reported that Mr. Percival cut off J's vehicle with little opportunity for them to react. So, I find ICBC reasonably found Mr. Percival had not proven J's vehicle was not an immediate hazard when he started his

left turn, and so he was 100% responsible for the accident based on section 174 of the MVA.

25. Further, as noted in the Continuing Legal Education of BC's *BC Motor Vehicle Accident Claims Practice Manual*, an insurer is not expected to investigate a claim with the skill and forensic proficiency of a detective. Rather, ICBC must bring "reasonable diligence, fairness, an appropriate level of skill, thoroughness, and objectivity to the investigation and the assessment of the collected information" (see *MacDonald v. Insurance Corporation of British Columbia*, 2012 BCSC 283). I find it has done so here.
26. On balance, I find the applicants have not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find the applicants have not satisfied section 10(a) of the 2-part test. It follows that the applicants' claim must fail.
27. Given this, I do not need to consider whether Mr. Percival 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.
28. 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. The applicants were unsuccessful, so I dismiss their claim for reimbursement of CRT fees. As ICBC was successful, I find the applicants must reimburse it for the \$25 it paid in CRT fees. Neither party claimed dispute-related expenses.

ORDERS

29. Within 21 days of this decision, I order the applicants to pay ICBC \$25 as reimbursement for CRT fees.
30. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*.

31. The applicants' claims are dismissed.

32. 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