



# Civil Resolution Tribunal

Date Issued: November 3, 2023

File: AR-2022-008367

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Park v. ICBC*, 2023 BCCRT 951

BETWEEN:

DOO HAE PARK and MIN HEE CHOI

**APPLICANTS**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Doo Hae Park, was in a motor vehicle accident on January 25, 2022 in Nanaimo, BC. The other applicant, Min Hee Choi, is the registered owner of the vehicle Ms. Park was driving when the accident occurred. The applicants say the

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

3. ICBC says it acted reasonably in determining Ms. Park was 100% at fault for the accident. It says that I should dismiss this dispute.
4. Ms. Park 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. In resolving disputes, the CRT must apply principles of law and fairness.
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 Ms. Park responsible for the accident?

## BACKGROUND, EVIDENCE, AND ANALYSIS

10. While I have read all of the parties' evidence and submissions, I refer only to what I find necessary to explain my decision.
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 Ms. Park. Second, the applicants must prove Ms. Park 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 Ms. Park is less responsible for the accident than ICBC assessed, they will not be successful if they cannot prove ICBC acted improperly or unreasonably.
13. As noted above, Ms. Park was driving Ms. Choi's vehicle at the time of the accident. It is undisputed that Ms. Choi was not present when the accident happened, and I find she is a party to this dispute only in her capacity as the vehicle's registered owner. So, while I will refer to Ms. Park's vehicle below, I mean Ms. Choi's vehicle, which Ms. Park was driving.
14. I turn to the accident circumstances. Ms. Park was in a dedicated left turn lane at the intersection of Nicol Street and Esplanade just before 9:00 am on January 25, 2022. She was facing south on Nicol Street, intending to proceed west on Esplanade after

completing her left turn. The intersection is controlled by a stoplight, which has an arrow for the dedicated left turn lane. A third party, T, was proceeding north on Nicol Street in the rightmost lane of 2 through lanes. Ms. Park turned left, and T then entered the intersection. The front of T's vehicle struck Ms. Park's vehicle on the front passenger side. None of this is disputed. What is disputed is the colour of the light when each driver entered the intersection.

15. Ms. Park reported the accident to ICBC by phone shortly after it happened. ICBC's file notes state that Ms. Park advised she was turning on a yellow light and that T was travelling straight on a red light and struck Ms. Park. Ms. Park called ICBC back approximately 1.5 hours later. ICBC's file notes state that Ms. Park wanted to emphasize that her traffic light was an advanced left turn light, and that she believed she had the right of way to turn on the yellow. Ms. Park also asked ICBC to check whether there were any intersection cameras, though ICBC advised that not every intersection has a camera.
16. T also reported the accident to ICBC on January 25, 2022, but they did so online. T's report stated that they were in the right lane coming down Nicol Street and Ms. Park turned across Nicol Street onto Esplanade in front of them. T did not mention the light colour in their online report.
17. On February 14, 2022, ICBC emailed both drivers some questions to clarify the accident circumstances. Both drivers emailed their responses that same day. Ms. Park stated that she was turning left at a left turn signal and was almost finished her "protected left turn". She stated that a car in the left lane facing north on Nicol Street was stopped at the intersection, but that T was travelling in the right lane and drove past the intersection and hit Ms. Park's car. Notably, ICBC did not ask Ms. Park to confirm the light colour as she approached and entered the intersection, and Ms. Park did not address that issue in her email response.
18. In contrast, ICBC specifically asked T about the light colour. I infer that it did so because T's initial report did not mention it. T stated that the light was green as they

approached the intersection and turned yellow as they entered. T also stated the light was red when they were moving the vehicles out of the intersection after the collision.

19. There were no witness statements and no dashcam or other video footage of the accident. ICBC held Ms. Park 100% responsible for the accident. The applicants say ICBC did so improperly or unreasonably. They say ICBC told them it would do a thorough investigation of the accident, including reviewing available footage, but then it incorrectly determined liability 7 months later without any evidence other than the drivers' statements.

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

20. 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 their claim, the applicants must prove that ICBC acted improperly or unreasonably in investigating the accident and assigning Ms. Park 100% responsibility for the January 25, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.
21. I find that the applicants' main complaints about ICBC's investigation are that it was unnecessarily long and disorganized. The applicants take particular issue with a new adjuster requesting a statement from Ms. Park on August 1, 2022, after they had received no updates from ICBC since Ms. Park sent her February 14 emailed statement.
22. ICBC says it did its best to communicate, given the high claims volume it was experiencing at the time. I find ICBC's file notes show that another adjuster was assigned on August 1, 2022, to assist with the existing adjuster's caseload. While the new adjuster called both Ms. Park and T to request statements, ICBC says this request was made in error, as the new adjuster was likely unaware of the February

14 emailed statements. Overall, I accept that the adjuster assigned to Ms. Park's claim was likely behind in their workload, and another adjuster was simply attempting to assist with concluding Ms. Park's claim when they mistakenly requested another statement.

23. ICBC ultimately sent the applicants letters dated August 6, 2022, advising that Ms. Park was found 100% responsible for the January 25, 2022 accident. While just over 6 months is not an ideal length of time to await a liability decision, I find that time alone is insufficient to conclude ICBC's investigation was unreasonable as it related to its liability assessment.

24. ICBC says it reasonably assigned responsibility to Ms. Park 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). ICBC says that because there were no independent witnesses, dash cams, or traffic cameras in the area, there was no way to determine whether T had a red light, as Ms. Park alleged.

25. I accept ICBC's submission that if there had been cameras at the intersection, it would have obtained the footage. I note that Ms. Park did not provide any evidence that there were cameras or video footage that ICBC failed to obtain or review. She also did not say what else ICBC's investigation should reasonably have included.

26. ICBC also notes that when Ms. Park initially reported the accident, she advised that she had a yellow light, but did not mention having an advanced left turn light. During that initial call, ICBC's file notes stated that ICBC advised the applicants that Ms. Park would likely be found liable for the accident, given the heavy onus on left-turning drivers. Ms. Park does not deny that ICBC provided that advice. ICBC says it was only when Ms. Park called back 1.5 hours later that she reported she had proceeded

on a left turn arrow. ICBC says it reasonably considered this to be an inconsistency in Ms. Park's reports about the accident circumstances. ICBC says that given this inconsistency, it reasonably put more weight on Ms. Park's initial report, which was consistent with T's report about the light colour.

27. Overall, I find that ICBC reasonably considered the available evidence, including statements from the 2 drivers, and concluded that Ms. Park had not proven she had an advanced left turn arrow or that she started her left turn when it was safe to do so. While Ms. Park remains adamant that she had the right of way with a left turn arrow, there is no evidence supporting that position. Under the circumstances noted above, I find it was reasonable for ICBC to place more weight on Ms. Park's initial report about having a yellow light, and to find that was likely the case, given it was consistent with T's report that they also had a yellow light.
28. For these reasons, I find that the applicants have not established that ICBC acted improperly or unreasonably in investigating the accident and assigning fault. Therefore, I find the applicants have not satisfied section 10(a) of the 2-part test in the ACR. It follows that their claim must fail.
29. Given this conclusion, I do not need to consider whether Ms. Park should be held less responsible for the accident under part 2 of the test set out in section 10(b) of the ACR.
30. 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. As the applicants were not successful, I find they are not entitled to reimbursement of their CRT fees.
31. ICBC was the successful party, and so I find the applicants must reimburse it \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

## ORDERS

32. Within 21 days of the date of this decision, I order the applicants to pay ICBC \$25 as reimbursement for CRT fees.
33. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
34. The applicants' claims are dismissed.
35. 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.

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Kristin Gardner, Tribunal Member