



Civil Resolution Tribunal

Date Issued: November 6, 2023

File: AR-2023-000570

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Bailey v. ICBC*, 2023 BCCRT 957

B E T W E E N :

VALRIE BAILEY

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Valrie Bailey, was involved in a motor vehicle accident on November 12, 2022. Ms. Bailey says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held

Ms. Bailey 100% responsible, but Ms. Bailey disagrees with that assessment and says they should be found less responsible.

3. ICBC says it acted reasonably and correctly determined responsibility.
4. Ms. Bailey is self-represented. 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. Bailey responsible for the accident?

BACKGROUND, EVIDENCE, AND ANALYSIS

10. In a civil proceeding such as this, Ms. Bailey as the applicant must prove their claims on a balance of probabilities, meaning “more likely than not”. While I have read all of the parties’ evidence and submissions, I refer only to what I find necessary to explain my decision.
11. Under the ACR, to succeed in their claim against ICBC, Ms. Bailey must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to them. Second, Ms. Bailey must prove they are less responsible for the accident than ICBC assessed. Under section 10 of the ACR, both parts of this test must be proven.
12. I turn to the accident circumstances. Ms. Bailey was undisputedly driving down an aisle in a Costco parking lot. Ms. Bailey says that a large vehicle was coming towards them in the opposite direction, and so they pulled over to the right side of the aisle and continued driving forward. It is undisputed that Ms. Bailey’s vehicle collided with a vehicle that was in a parking stall to Ms. Bailey’s right. Ms. Bailey says that the other vehicle, driven by K, must have reversed into them.
13. Ms. Bailey says that ICBC improperly held them 100% responsible for the accident. Specifically, Ms. Bailey says that ICBC concluded the vehicle damage was inconclusive about which driver’s version was more likely, and so Ms. Bailey says it was unreasonable for ICBC to find Ms. Bailey responsible. Ms. Bailey argues that K was fully responsible for the accident.

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

14. Section 10(a) of the ACR essentially codified the existing case law that says the issue in a claim against ICBC about its liability determination is whether it 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, Ms. Bailey must prove that ICBC acted improperly or unreasonably in investigating the accident and assigning Ms. Bailey 100% responsibility for the November 12, 2022 accident. Merely disagreeing with ICBC’s decision does not mean ICBC acted improperly or unreasonably.
15. Both drivers provided their initial reports of the accident to ICBC shortly after it happened on November 12, 2022. As noted, Ms. Bailey reported that they were driving down a parking lot aisle when they moved aside to their right for a large approaching vehicle. Ms. Bailey said that as they went past K’s vehicle, they felt an impact and stopped to find their vehicles had collided. In a later telephone statement to ICBC on December 5, 2022, Ms. Bailey stated that after pulling over for the large vehicle, they proceeded forward about 10 vehicle lengths before they felt a “slight push” and then heard a scratch. Ms. Bailey stated that when they exited their vehicle after the impact, they saw K’s vehicle was “away” from their vehicle.
16. In contrast, in their initial report, K stated that they were sitting in their parked vehicle, with the engine off, and that Ms. Bailey got too close to K’s vehicle while passing behind it and collided with it. In a later December 8, 2022 telephone statement, K said they had just loaded their groceries into their vehicle and then sat in the driver’s seat when they felt an impact. K stated that Ms. Bailey told K that they were trying to give space to another vehicle that was driving in the aisle before the impact happened.
17. The drivers each provided ICBC with photos of their vehicle damage. The photos show scraping and dents along the passenger side of Ms. Bailey’s vehicle from about the middle of the front passenger door to the rear wheel well. K’s vehicle had scuffs or scratches on just the right half of the rear bumper.

18. Neither driver took pictures showing the vehicles' positions or surroundings immediately following the collision. There were no witnesses and no dash cam or other video footage of the accident.
19. ICBC asked a material damage estimator, BD, to review the drivers' statements and vehicle damage photos to determine whether it was possible that Ms. Bailey struck K's stationary vehicle. BD's file notes stated that that scenario was possible, but they could not be certain without knowing what vehicles were parked beside K.
20. ICBC's file notes show that Ms. Bailey advised there were vehicles parked on either side of K's vehicle, one may have been smaller and the other about the same length as K's vehicle. K could not recall whether the vehicles parked on either side of them were positioned further out into the aisle than K's vehicle. In other words, neither driver was able to provide additional information that would be of assistance to BD.
21. On January 6, 2023, ICBC issued a CL722 (a detailed responsibility letter) finding Ms. Bailey 100% responsible for the accident. The letter stated there was an absence of objective evidence about how the accident happened, and the vehicle damage did not prove the actions of either driver. Therefore, ICBC relied on the agreed facts, which were that Ms. Bailey had pulled to the right and was in motion at the time of impact. The letter advised that this placed Ms. Bailey in the position to prove K was not stationary and had reversed, which K denied. ICBC determined that Ms. Bailey had not proven K reversed, and so Ms. Bailey as the driver of the moving vehicle was 100% responsible.
22. I acknowledge that Ms. Bailey disagrees with ICBC's determination and argues that the vehicle damage only supports Ms. Bailey's version that K must have reversed into them. However, I find that ICBC reasonably relied on its material damage estimator's opinion that K's version was also possible.
23. Overall, I find that ICBC reasonably obtained multiple statements from both drivers and investigated the vehicle damage photos. I also find ICBC reasonably considered that Ms. Bailey reported moving to the right immediately before the collision, which

made K's version more likely. 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 in this case.

24. I find Ms. Bailey has not proven ICBC acted improperly or unreasonably in investigating the accident or assigning liability. So, I find Ms. Bailey has not satisfied section 10(a) of the 2-part test in the ACR. I dismiss Ms. Bailey's claim.
25. Given this conclusion, it is unnecessary to consider whether Ms. Bailey should be held less responsible for the accident under part 2 of the test 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. As Ms. Bailey was not successful, I find they are not entitled to reimbursement of their CRT fees.
27. ICBC was the successful party, and so I find Ms. Bailey must reimburse it \$25 for its paid CRT fees. Neither party claimed dispute-related expenses.

ORDERS

28. Within 21 days of the date of this decision, I order Ms. Bailey to pay ICBC \$25 as reimbursement for CRT fees.
29. ICBC is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
30. I dismiss Ms. Bailey's claims.

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.

Kristin Gardner, Tribunal Member