



Civil Resolution Tribunal

Date Issued: November 8, 2023

File: AR-2023-001192

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Kumar v. ICBC*, 2023 BCCRT 964

BETWEEN:

RAM KUMAR

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about accident responsibility. The applicant, Ram Kumar, was in a motor vehicle accident on September 4, 2022. The applicant says the respondent

insurer, Insurance Corporation of British Columbia (ICBC), incorrectly held them 100% responsible for the accident.

2. ICBC says it acted reasonably in investigating the accident and correctly determined responsibility.
3. The applicant is self-represented. ICBC is represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. 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.
5. 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, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. 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.
7. 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

8. The issues in this dispute are:
 - a. Whether ICBC acted improperly or unreasonably in assigning responsibility for the accident, and
 - b. If so, what extent, if any, the applicant is responsible for the accident.

BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant 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 applicant must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to them. Second, the applicant must prove they are less responsible for the accident than ICBC assessed.
10. Further to section 10 of the ACR, **both** parts of the test described above must be proven. This means that even if the applicant can prove they are less responsible for the accident than ICBC assessed, the applicant 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. The applicant did not provide any final reply submissions, despite the opportunity to do so.

The Accident

11. On September 4, 2022, at approximately 9:30pm, the applicant was driving southbound in the leftmost lane of King George Highway near 78th Avenue in Surrey, British Columbia. King George Highway in this area has 2 lanes for southbound traffic, a right turn lane, and a bike lane separating the travel lanes and right turn lane. An ambulance, with lights and sirens activated, was approaching quickly from behind the applicant, in the same left lane.

12. The applicant undisputedly started to move their vehicle into the right lane, but then slowed drastically while straddling the left and right lane. The ambulance collided with the left rear bumper of the applicant's vehicle.
13. Police attended the scene and issued a violation ticket to the applicant for failing to yield to an emergency vehicle (under section 177 of the *Motor Vehicle Act* (MVA), discussed below). The applicant says the police later cancelled this ticket after seeing the applicant's dash camera footage.
14. ICBC held the applicant 100% responsible for the accident, stating in a November 7, 2022 CL722 (detailed responsibility letter) that the applicant failed to abide by section 177 of the MVA which states that when an emergency vehicle approaches with lights and sirens, a driver must yield the right of way and immediately drive as close as possible to the nearest curb or edge of the roadway, stop, and remain in that position until the emergency vehicle has passed. ICBC says the applicant failed to move as far to the right as possible, and instead unsafely stopped their vehicle while straddling 2 lanes, causing the accident.
15. As a result, ICBC held the applicant solely responsible for the accident for failing to complete their manoeuvre out of the ambulance's lane of travel. The applicant says ICBC did so improperly or unreasonably. Specifically, the applicant says ICBC failed to consider that the violation ticket they were issued was cancelled.

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

16. 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). As noted, to succeed in their claim, the applicant must prove that ICBC acted improperly or unreasonably in investigating the accident and assigning the applicant sole

responsibility for the September 4, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.

17. Apart from disagreeing with ICBC's ultimate conclusion on responsibility, the applicant argues ICBC failed to consider that the violation ticket was "cancelled". In essence, the applicant argues this means they did not breach section 177 of the MVA.
18. Although the applicant alleges the violation ticket was "cancelled", they did not provide any evidence in support. They provided a copy of the violation ticket, but there is no indication on the ticket or otherwise that the ticket was cancelled. ICBC raised this issue in its submissions, but the applicant did not provide any reply submissions, so did not address it. On balance, I find the applicant has not proven the violation ticket was cancelled. Therefore, I find ICBC could not have failed to consider that information.
19. In any event, even if the violation ticket had been cancelled, that does not mean it would have been improper for ICBC to conclude the applicant breached section 177 of the MVA. In traffic court, the officer who issued the violation ticket to the applicant must prove beyond a reasonable doubt that the applicant committed the offence. However, in a civil proceeding such as this one, the burden of proof is on a balance of probabilities, meaning "more likely than not". So, a police officer electing not to pursue a violation ticket in court is not determinative of the applicant's negligence. Overall, I find ICBC did not act improperly or unreasonably in its consideration of the violation ticket.
20. Aside from the violation ticket and disagreeing with ICBC's responsibility assessment, the applicant does not argue ICBC otherwise acted improperly or unreasonably. I find the applicant has not satisfied section 10(a) of the 2-part test in the ACR. I dismiss the applicant's claim.
21. Given this, I do not need to consider whether the applicant should be held less responsible for the accident under part 2 of the test, as set out in section 10(b) of the ACR.

FEES, EXPENSES AND INTEREST

22. 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 applicant was not successful, I dismiss their claim for reimbursement of tribunal fees. ICBC was the successful party, so I find the applicant must reimburse it \$25 in paid tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

23. Within 21 days of the date of this decision, I order the applicant to pay ICBC a total of \$25 as reimbursement for tribunal fees.

24. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

25. The applicant's claim is dismissed.

26. 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