



# Civil Resolution Tribunal

Date Issued: November 8, 2023

File: AR-2023-000349

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Kesete v. ICBC*, 2023 BCCRT 967

BETWEEN:

MICHAELE TEDROS KESETE

**APPLICANT**

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Andrea Ritchie, Vice Chair

## INTRODUCTION

1. This dispute is about accident responsibility. The applicant, Michael Tedros Kesete, was in a motor vehicle accident on August 13, 2022. Mr. Kesete says the respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined he

was solely responsible for the accident, when he says he should be held 0% responsible instead.

2. ICBC says it acted properly and reasonably in investigating the accident and correctly determined fault.
3. Mr. Kesete represents himself. 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, Mr. Kesete is responsible for the accident.

## BACKGROUND, EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Kesete must prove his claims on a balance of probabilities, meaning “more likely than not”. Under the ACR, to succeed in his claim against ICBC, Mr. Kesete must first prove that ICBC acted improperly or unreasonably in assigning sole responsibility for the accident to him. Second, Mr. Kesete must prove he is 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 Mr. Kesete can prove he is less responsible for the accident than ICBC assessed, he will not be successful if he 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 Mr. Kesete chose not to submit any evidence or final reply submissions, despite being given the opportunity to do so.

### ***The Accident***

11. On August 13, 2022, Mr. Kesete says he was stopped in the right curb parking lane westbound on Kingsway to load passengers. Once they were loaded, Mr. Kesete continued forward in the right curb lane when a third party turned right in front of him, from the leftmost lane of 3. There was undisputedly a car stopped in the middle lane with its hazards on, waiting for Mr. Kesete’s parking space.
12. The third party reported to ICBC that they were in the middle lane and then started a right turn onto Ormidale Street when the 2 vehicles collided.

13. Two witnesses, both passengers in Mr. Kesete's vehicle, also provided statements to ICBC. They both confirmed that after they loaded into Mr. Kesete's vehicle, he started to move forward when the third party turned right from the middle lane, across the parking lane that Mr. Kesete was traveling in, and the accident happened.
14. Notably, Mr. Kesete does not allege ICBC acted improperly or unreasonably in assigning responsibility. Rather, he argues ICBC is wrong in its conclusion. He says this incorrect conclusion has had a negative effect on his ability to be a commercial driver.

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

15. 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 his claim, Mr. Kesete must prove that ICBC acted improperly or unreasonably in investigating the accident and assigning him sole responsibility for the August 13, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably.
16. As noted, Mr. Kesete does not make any specific allegations that ICBC acted improperly or unreasonably. Still, I have reviewed the submissions of both parties, and specifically ICBC's conduct in investigating the accident and assessing fault. For the following reasons I find Mr. Kesete has not proven ICBC acted improperly or unreasonably, and I dismiss his claim for failing to satisfy section 10(a) of the ACR, which is part 1 of the 2-part test.
17. The evidence and submissions show that ICBC took statements from both drivers and from 2 of 4 witnesses. There is no explanation why statements were not collected from the other 2 witnesses, but Mr. Kesete does not argue they should have been.

ICBC obtained additional statements and a diagram from each driver outlining the accident. There is no indication of any dash camera or other video footage available.

18. Based on the statements and diagrams, ICBC says it reasonably found Mr. Kesete solely responsible for the accident for breaching section 169 of the *Motor Vehicle Act* (MVA), which says that a person must not move a vehicle that is stopped, standing, or parked unless the movement can be made with safety and with the appropriate signal.
19. ICBC argues there is no evidence to support it acted improperly or unreasonably during its accident investigation or its responsibility assessment. I agree. Based on the evidence before me, I find there is simply no evidence, or any allegation, that ICBC acted improperly or unreasonably. So, as noted above, I find Mr. Kesete has not met his burden as required by section 10(a) of the ACR. As a result, I dismiss his claim.
20. Given this, I do not need to consider whether Mr. Kesete 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.

## **FEES, EXPENSES AND INTEREST**

21. 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 Mr. Kesete was not successful, I dismiss his claim for reimbursement of tribunal fees. For the same reason, I find Mr. Kesete must reimburse ICBC \$25 in paid tribunal fees. Neither party claimed dispute-related expenses.

## **ORDERS**

22. Within 30 days of the date of this decision, I order Mr. Kesete to pay ICBC a total of \$25 as reimbursement of tribunal fees.
23. ICBC is also entitled to post-judgment interest under the *Court Order Interest Act*.

24. Mr. Kesete's claim is dismissed.

25. 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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Andrea Ritchie, Vice Chair