



Civil Resolution Tribunal

Date Issued: November 14, 2023

File: AR-2023-000719

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Manning v. ICBC*, 2023 BCCRT 978

B E T W E E N :

STEPHANIE MANNING

APPLICANT

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about accident responsibility.
2. The applicant, Stephanie Manning, was in a motor vehicle accident on October 2, 2022. Ms. Manning says the respondent insurer, Insurance Corporation of British

Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held Ms. Manning 100% responsible, but Ms. Manning says she should be found 0% responsible instead.

3. ICBC says it acted reasonably in finding Ms. Manning 100% responsible for the accident.
4. Ms. Manning represents herself. 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 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. Ms. Manning submitted a document labelled "Witness statement of the accident". The picture of the statement was cut off on one side, so its contents were not entirely visible. At my direction, CRT staff invited Ms. Manning to resubmit the full statement

and she did so. ICBC had an opportunity to respond to the new evidence, and did so. I find this evidence is relevant to the dispute, and it would not be procedurally unfair to admit it in evidence since ICBC was able to respond to it. Consistent with the CRT's flexible mandate, I have considered this new evidence in my decision below. However, as discussed below, my decision does not turn on this witness statement in any event.

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 Ms. Manning responsible for the accident?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Ms. Manning must prove her claims on a balance of probabilities (meaning "more likely than not"). Under the ACR, to succeed in her claim against ICBC, Ms. Manning must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to her. Second, Ms. Manning must prove she 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 Ms. Manning can prove she is less responsible for the accident than ICBC assessed, she will not be successful if she 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 October 2, 2022, Ms. Manning's vehicle was parked, facing east, on the south side of Laurel Street in Burnaby, BC. It was approximately 9:00 pm, and it was dark. A third party, J, was driving eastbound on Laurel Street as Ms. Manning was getting

into her vehicle. J's passenger mirror struck Ms. Manning's driver door. There are no photographs of the vehicle damage in evidence.

14. Both Ms. Manning and J reported the accident to ICBC, and both gave statements. ICBC also took a statement from a witness, AA, who was sitting in parked vehicle across the street at the time of the accident. There was undisputedly no dash camera or other video footage of the accident.
15. ICBC held Ms. Manning 100% responsible for the accident, based on section 203 of the *Motor Vehicle Act* (MVA), which sets out the obligations of a person opening a vehicle door. Ms. Manning says that ICBC acted improperly or unreasonably in holding her 100% responsible, and that she should be held 0% responsible instead.

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

16. 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 her claim, Ms. Manning must prove ICBC acted improperly or unreasonably in assigning her sole responsibility for the October 2, 2022 accident. Merely disagreeing with ICBC's decision does not mean ICBC acted improperly or unreasonably. Similarly, even in a situation where I would have come to a different conclusion on the apportionment of responsibility, that does not mean ICBC acted improperly or unreasonably.
17. Ms. Manning makes 2 arguments about why she believes ICBC's investigation was improper or unreasonable. First, she says ICBC did not consider her evidence, including a witness statement from her neighbour, DH, and an audio recording taken after the accident. Second, she says ICBC acted contrary to its public messaging about distracted driving by not finding that J was distracted when the accident happened.

18. I begin with the witness statement. Ms. Manning's neighbour, DH, undisputedly saw the accident. ICBC says it determined that DH was "well known" to Ms. Manning and so they were not considered an independent witness, because their statement could be biased. ICBC provided an October 20, 2022 file note from its employee who says they spoke with DH. The note says that DH is Ms. Manning's neighbour and that they "know one another", and that they were talking to each other on the sidewalk before the accident. The note goes on to say that the employee told DH that it did not require a statement from them because they know one of the parties involved in the accident.
19. Ms. Manning says ICBC assumed that because she and DH live in the same building complex that they are "too familiar" with each other and that DH would lie for her. In *Sato v. ICBC*, 2023 BCCRT 324, a CRT vice chair found that it is improper for ICBC to refuse to consider statements from witnesses who are known to the party. The vice chair agreed that witnesses with a relationship to the party may not be as neutral as truly independent witnesses, but that lack of neutrality is only one factor to consider when weighing the witnesses' evidence. While CRT decisions are not binding on me, I find this reasoning persuasive and apply it here. I accept that because DH knows Ms. Manning, their statement may not be as neutral as a witness completely unknown to Ms. Manning and J. However, I find the mere fact that DH and Ms. Manning know each other does not, on its own, mean that DH's statement would lack credibility to the extent that ICBC should not even consider it. I find ICBC acted improperly and unreasonably by refusing to take DH's statement.
20. As I have found that ICBC acted improperly and unreasonably by refusing to consider DH's witness statement, it follows that Ms. Manning has satisfied the first part of the 2-part test under the ACR. So, I find I do not need to consider in detail here Ms. Manning's arguments about the audio recording or ICBC's distracted driving messaging. However, I will address these arguments below to the extent they are relevant to the second part of the test under the ACR, which is whether and to what extent Ms. Manning is responsible for the accident.

To what extent, if any, is Ms. Manning responsible for the accident?

21. To succeed in her claim, section 10(b) of the ACR says that Ms. Manning must show she is less responsible for the October 2, 2022 accident than the 100% ICBC assigned her.
22. ICBC says it found Ms. Manning 100% responsible based on section 203 of the MVA. Section 203(1) says that a person must not open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so. Section 203(2) says that a person must not leave a door open on the side of a vehicle available to moving traffic for longer than is necessary to load or unload passengers.
23. Ms. Manning does not dispute that section 203 of the MVA applies to the accident. However, she says that she complied with both parts of it. ICBC does not specify which subsection of section 203 of the MVA it applied in holding Ms. Manning 100% responsible for the accident. So, I will consider both sections below.
24. First, I find that Ms. Manning did not leave her vehicle door open for longer than was necessary to load or unload passengers. I say this because there is no evidence that she did so. The evidence is generally consistent that Ms. Manning was getting into her vehicle, or about to get into it, at the time of the accident. Ms. Manning says she only had her door open for a few seconds. This is supported by AA's October 28, 2022 statement. AA stated that Ms. Manning had opened her driver's door and was in the doorway getting into her vehicle. They said Ms. Manning's door was open for "a couple of seconds".
25. At ICBC's request, AA provided a follow-up statement on November 23, 2022. In this later statement, AA said that at this point they did not remember exactly if Ms. Manning was just opening her door or was standing there for a minute or two. I give greater weight to AA's earlier statement on this point as they noted they were unsure in the later statement. Lastly, while J said in their statement that Ms. Manning's door was "wide open", they did not say that it had been open for longer than necessary. So, I find there is no evidence that Ms. Manning breached section 203(2) of the MVA.

26. Next, I will consider section 203(1) of the MVA, which requires that a person not open a vehicle door on a side of the vehicle available to moving traffic unless and until it is reasonably safe to do so. In submissions, Ms. Manning says that she determined it was safe to open her vehicle door before doing so. However, she does not describe how she determined it was safe. Notably, in both Ms. Manning's initial report of the accident and in her later statement to ICBC, she did not mention looking down the street or checking for traffic before opening her door. In her November 11, 2022 statement, she said "prior to the accident the other vehicle I am unsure what they were doing", so I infer she did not see J's vehicle before the accident.
27. Ms. Manning also provided an August 28, 2023 statement from DH, who as noted ICBC declined to interview about the accident. I find DH's statement is generally inconsistent with the other available evidence, including Ms. Manning's own statement. For example, DH said that Ms. Manning waited at the back of her vehicle until J's vehicle passed her, when Ms. Manning and AA both say that Ms. Manning was getting into her driver's seat at the time of the accident. DH also says that Ms. Manning's side mirror was almost completely knocked off, when it is undisputed that the only damage to Ms. Manning's vehicle was on the driver's door. For this reason, I find DH's statement is unreliable, and I give it no weight.
28. Based on Ms. Manning's statement that her door was only open for a few seconds before the impact, which as noted is supported by AA's original witness statement, I find it likely that J's vehicle was visible to Ms. Manning before she opened her door. On balance, I find J's vehicle was there to be seen, and Ms. Manning has not established that it was reasonably safe to open her vehicle door when she did. So, I find Ms. Manning breached section 203(1) of the MVA.
29. Further, I find Ms. Manning's MVA breach caused or contributed to the accident. In finding this, I place significant weight on the undisputed fact that J's passenger mirror struck Ms. Manning's vehicle, but did not strike Ms. Manning. The parties do not dispute that Ms. Manning was either standing beside her vehicle or in the process of getting into it at the time of the accident. So, I find that for J's vehicle to make contact

with Ms. Manning's door but not Ms. Manning, Ms. Manning's door would have to be open wide enough that it would stick out past her body. In her statement, Ms. Manning said her door was only open an inch and a half. I find this is unlikely, as in that case I would expect that J's mirror would have made contact with Ms. Manning rather than her door. So, I find that Ms. Manning's door was open wide enough to be a hazard to passing traffic. If Ms. Manning had checked for traffic first and not opened her vehicle door until J's vehicle passed, the accident would not have happened, so I find Ms. Manning is at least partially responsible for the accident.

30. However, the analysis does not end there. I find I must consider whether J's actions contributed to the accident as well. Ms. Manning argues that J was distracted and drove too close to her vehicle. Ms. Manning says that ICBC's website says that "anything that takes your attention away from driving, like chatting with passengers, eating or drinking, or adjusting radio or vehicle settings, can contribute to distracted and inattentive driving." Ms. Manning did not provide evidence in support of this, such as a screenshot of ICBC's website. However, ICBC does not dispute that its website says this, or did at one time, and so I accept this as accurate.
31. With that said, I find ICBC's general description of distracted driving on its website is not binding. I find the relevant consideration is whether J's actions were negligent. As the party asserting negligence, Ms. Manning has the burden to prove that J's actions fell below the standard of a reasonably prudent driver in the circumstances, and that this caused or contributed to the accident.
32. It is well-established that all drivers owe a duty to other road users to exercise reasonable care as they drive. In considering whether a driver meets this standard, the CRT (like the court) will examine the reasonableness of the driver's actions with reference to the rules of the road in the MVA (see *Salaam v. Abramovic*, 2010 BCCA 212, at paragraphs 18 to 21). I infer Ms. Manning argues that J breached section 144 of the MVA, which says that a person must drive with due care and attention and reasonable consideration for others.

33. Ms. Manning says that J was distracted by looking for a local business, and because they were emotionally stressed due to a recent family matter. Ms. Manning says that J admitted this in an audio recording taken shortly after the accident, which Ms. Manning submitted in evidence. I find J did not admit to being distracted in the audio recording. In fact, they denied Ms. Manning's accusation that they were looking at the business instead of the road. While they did say that someone told them the business was "there", they did not say that they were distracted by looking for it, or that they took their eyes off the road to do so. I find this statement does not, in itself, amount to an admission of distracted driving. Similarly, I find the recording does not support Ms. Manning's allegation that J admitted they were distracted because of their family issue.
34. Finally, I acknowledge that J apologized to Ms. Manning in the recording. ICBC says that this is not an admission of responsibility for the accident. I agree. Under the *Apology Act*, an apology does not constitute an express or implied admission of fault or liability and must not be taken into account in any determination of fault or liability. So, I give no weight to J's apology in the recording.
35. While I find it unproven that J admitted to being distracted in the audio recording, this does not mean J was not negligent. As noted, in J's November 11, 2022 statement, they said that Ms. Manning had her driver's door "wide open". While ICBC says in submissions that J reported that they had to swerve to avoid Ms. Manning's door, I find this is not what J's statement says. Instead, J's statement merely says that they tried to avoid Ms. Manning's door. They do not describe swerving to avoid a sudden hazard, as ICBC argues. Notably, neither J nor AA said that Ms. Manning opened her door suddenly or opened it further as J's vehicle passed by. Based on J's own statement, I find Ms. Manning's door was already open and was there to be seen as J approached.
36. J said in their statement that they kept to their right as there was opposing traffic, while AA said in their November 23, 2022 statement that J had "lots of space" and there were no other vehicles on the road. Whether or not there was oncoming traffic,

I find a reasonably prudent driver in the circumstances would drive with caution around a parked vehicle with a visibly open door. I find J breached section 144 of the MVA by driving closely enough to Ms. Manning's vehicle that their mirror struck her open door. I find this breach also contributed to the accident.

37. As I have found both J and Ms. Manning were negligent, I must apportion liability by fault or blameworthiness. This requires an assessment of how much each person's conduct fell below a reasonable standard (see *Chambers v. Goertz*, 2009 BCCA 358). I find that Ms. Manning's conduct was more blameworthy than J's, because she had a greater opportunity to prevent the accident. J's vehicle was established on the road and had the right of way. So, I find that Ms. Manning committed the first negligent act by opening her door without ensuring it was safe to do so. J's negligence in failing to avoid the door only came as a result of that initial act. In these circumstances, I find J was 25% responsible for the accident, and Ms. Manning was 75% responsible. So, I find that Ms. Manning has proven she was less responsible for the accident than ICBC assessed. This means that Ms. Manning has proven both parts of the ACR test, so her claim is successful.

CRT FEES AND EXPENSES

38. 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. I find Ms. Manning is entitled to reimbursement of the \$125 in CRT fees she paid. I dismiss ICBC's claim for CRT fees as it was unsuccessful. Neither party claimed dispute-related expenses and so I make no order for them.

ORDERS

39. Within 21 days of this decision, I order ICBC to:

- a. Amend its internal responsibility assessment to reflect that Ms. Manning is 75% responsible for the October 2, 2022 accident, and
 - b. Pay Ms. Manning \$125 as reimbursement for CRT fees.
40. Ms. Manning is entitled to post-judgment interest under the *Court Order Interest Act*.
41. 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