



# Civil Resolution Tribunal

Date Issued: November 16, 2023

File: AR-2023-000566

Type: Accident Claims

Category: Accident Responsibility

Civil Resolution Tribunal

Indexed as: *Bob's Trucking Ltd. v. ICBC*, 2023 BCCRT 984

B E T W E E N :

Bob's Trucking Ltd.

**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. A vehicle owned by the applicant, Bob's Trucking Ltd. (BTL), and driven by BTL's employee, SD, was in a motor vehicle accident on July 27, 2022. BTL says the

respondent insurer, Insurance Corporation of British Columbia (ICBC), incorrectly determined responsibility for the accident. ICBC held SD 100% responsible, but BTL says SD should be found 50% responsible instead.

3. ICBC says it acted reasonably in determining that SD was 100% responsible for the accident.
4. BTL is represented by an owner or principal. 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 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.
7. 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.

## **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, to what extent, if any, is SD responsible for the accident?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, as the applicant BTL must prove its claims on a balance of probabilities (meaning “more likely than not”). Under the ACR, to succeed in its claim against ICBC, BTL must first prove that ICBC acted improperly or unreasonably in assigning responsibility for the accident to SD. Second, BTL must prove SD 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 BTL can prove SD is less responsible for the accident than ICBC assessed, it will not be successful if it 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.
11. On July 27, 2022, SD was driving BTL’s commercial transport truck with a loaded trailer attached on Highway 5, just outside Merritt, BC, in the middle of three southbound lanes. BTL’s truck collided with another commercial transport truck which was being driven by a third party, H, in the far right southbound lane. Photos in evidence show that BTL’s truck sustained significant damage to the passenger side cab and trailer. H’s trailer was damaged on the driver’s side.
12. BTL and H both reported the accident to ICBC. SD and H each provided verbal statements by phone, and each alleged that the other driver had crossed into their lane. There were undisputedly no witnesses to the accident. Neither driver provided dash camera footage, which I will discuss in more detail below.

13. An RCMP officer attended the accident scene and interviewed both drivers. The attending officer provided a police report, which noted that SD had said they may have fallen asleep.
14. Based on the police report, ICBC found SD was 100% responsible for the accident under section 151 of the *Motor Vehicle Act*, which sets out the obligations of a driver moving from one lane to another. BTL says ICBC did so improperly or unreasonably. BTL says the police report should not be used as evidence. It denies that SD told the officer they may have fallen asleep, and argues that if SD had said this, the officer would have issued them a violation ticket.
15. As noted, the first step of the test I must consider is whether ICBC acted improperly or unreasonably in finding SD was 100% responsible for the accident.

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

16. As noted above, section 10(a) of the ACR says that to succeed in its claim, BTL must prove ICBC acted improperly or unreasonably in assigning SD sole responsibility for the July 27, 2022 accident.
17. BTL argues that ICBC acted improperly or unreasonably because it based its decision about responsibility for the accident solely on the police report. BTL says that the police report is “never supposed to be used for decision making”, but did not provide any legal authority for this position. BTL also says that if SD had actually admitted to falling asleep, the attending officer would have ticketed them.
18. ICBC provided the police report in evidence. In a section labeled “police comments”, the officer noted that SD “uttered that he felt he may have fallen asleep.” I note this statement is hearsay. As noted above, the CRT has discretion to admit evidence it considers relevant, including hearsay evidence, even if it would not be admissible in court. I find the police report, including the officer’s recollection of SD’s statement, is relevant to this dispute. While in its submissions BTL denies that SD said that they

may have fallen asleep, it did not provide any direct evidence, such as a statement from SD, to contradict the officer's report.

19. I note there is a possible error in the police report, in that the officer indicated the accident was a rear end accident when it would more appropriately be characterized as a sideswipe since the parties were undisputedly driving in different lanes. However, BTL does not argue that this error is so significant that the rest of the police report is unreliable or should not be considered, and I find it is not. The accident undisputedly occurred when SD was overtaking H, and the damage to H's trailer was primarily to the rear, so the report is not entirely incorrect. Further, I find from ICBC's submissions and file notes in evidence that it did not treat the accident as a rear end accident, and did not find SD was responsible on that basis, so I find this minor error did not impact ICBC's responsibility investigation.
20. As for BTL's argument that the officer would have issued SD a violation ticket if they had admitted to falling asleep, I find the absence of a violation ticket is not determinative of whether SD is responsible for the accident. BTL provided no evidence that the RCMP must always issue a ticket in these circumstances, and I find the choice of whether to do so was within the officer's discretion. In *Kumar v. ICBC*, 2023 BCCRT 964, a CRT vice chair found that a police officer electing not to pursue a violation ticket in court was not determinative of whether a driver was negligent, since a violation ticket requires a higher burden of proof than a civil proceeding like a CRT dispute. Although *Kumar* involved a ticket that was issued and later cancelled, and prior CRT decisions are not binding on me in any event, I find this reasoning persuasive and applicable in these circumstances. I find the fact that the officer did not issue SD a violation ticket does not mean that SD did not make the statement noted in the police report. So, I find it was reasonable for ICBC to consider this information in making its decision about responsibility for the accident.
21. BTL also argues that the officer would have had a recording device that would have recorded their conversation with SD. However, it provided no evidence in support of this argument or to show that it asked the RCMP or ICBC if there was a recording. In

the absence of any evidence that the officer recorded their conversation with SD, I find BTL has not proven that such a recording existed or that if one did, ICBC failed to consider it.

22. Lastly, as noted, neither driver provided dash camera footage to ICBC. In SD's statement to ICBC, they advised that although they had a dash camera previously, the bracket to attach the camera to the windshield was broken and so they did not have footage of the accident. In its submissions, ICBC says that the bracket and camera appear to be attached in the accident scene photos. ICBC says that because of this, it drew an adverse inference against BTL for not providing dash camera footage. While BTL did not respond to this argument, I find the accident scene photos are not sufficiently clear for me to determine whether SD indeed had a working dash camera at the time of the accident, and I decline to draw an adverse inference on this basis. However, I note nothing turns on this in any event, as ICBC did not rely on this argument in its detailed responsibility assessment. Instead, as noted, it relied primarily on the police report in finding SD 100% responsible for the accident.
23. BTL has not provided any other evidence or explanation as to why it believes the police report should not be considered, or any other reason it believes ICBC acted improperly or unreasonably. On balance, I find BTL has not proven ICBC acted improperly or unreasonably in investigating the accident and assigning responsibility. So, I find BTL has not satisfied section 10(a) of the 2-part test. It follows that BTL's claim must fail.
24. Given this, I do not need to consider whether SD 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. However, even if BTL had proven that ICBC had acted improperly or unreasonably, I would have found that it has not proven that SD was less than 100% responsible for the accident. As noted, BTL did not provide a direct statement from SD to contradict the police report, or any other affirmative evidence to support its position that H crossed into SD's lane. So, I would have dismissed its claim on part 2 of the test in any event.

## **CRT FEES AND EXPENSES**

25. 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.
26. In support of its claim for dispute-related expenses, BTL argued that it should not be required to pay increased insurance premiums. I find this is not a claim for dispute-related expenses as it does not relate to the conduct of the CRT process, as required by CRT Rule 9.5. In any event, BTL was unsuccessful in this dispute and so I find it is not entitled to reimbursement of CRT fees or dispute-related expenses.
27. ICBC was the successful party, and so I find BTL must reimburse it \$25 for its paid CRT fees.

## **ORDERS**

28. Within 21 days of this decision, I order BTL 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 BTL'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.

---

Alison Wake, Tribunal Member